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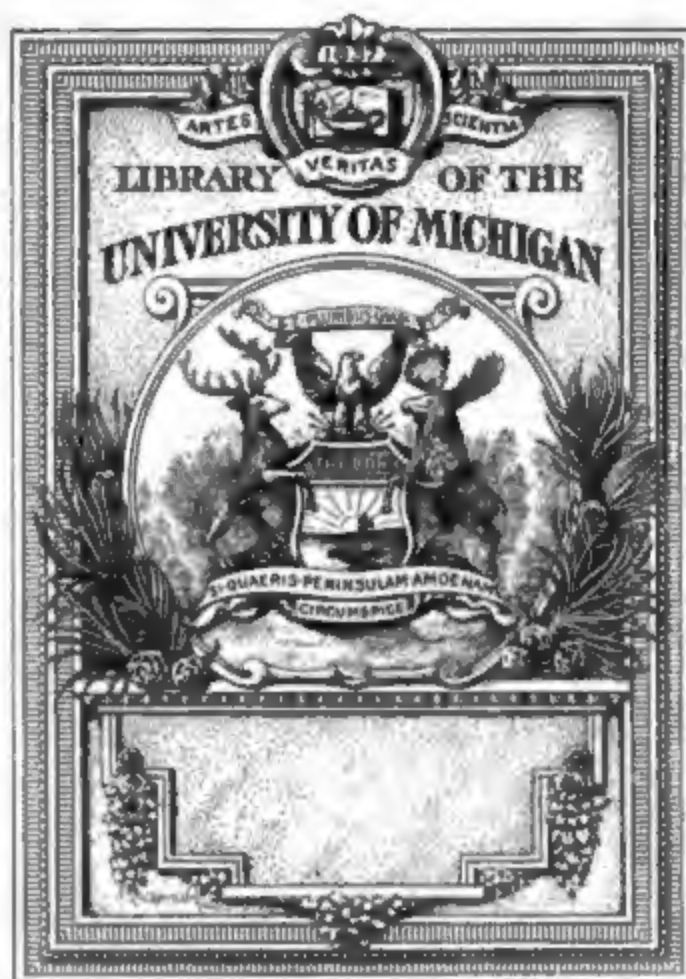
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INTERSTATE COMMERCE COMMISSION REPORTS.
VOLUME III.

REPORTS AND DECISIONS

OF THE

INTERSTATE COMMERCE COMMISSION

OF THE

UNITED STATES.

March 25th, 1889, to May 21st, 1890.

REPORTED BY THE COMMISSION.

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Interstate Commerce Commission.

HON. THOMAS M. COOLEY, OF MICHIGAN, *Chairman.*

HON. WILLIAM R. MORRISON, OF ILLINOIS.

HON. AUGUSTUS SCHOONMAKER, OF NEW YORK.

HON. WALTER L. BRAGG, OF ALABAMA.

HON. WHEELOCK G. VEAZEY, OF VERMONT.

THE LITTLE ROCK & MEMPHIS RAILROAD CO. v.
THE EAST TENNESSEE VIRGINIA & GEORGIA
RAILROAD CO. AND THE ST. LOUIS IRON MOUN-
TAIN AND SOUTHERN RAILWAY COMPANY.

Heard December 11, 1888.—Filing of Briefs Completed January 14, 1889.—
Decided March 25, 1889.

English Legislation and the procedure thereunder, in respect to applications by carriers to be admitted to through routes and to participate in through rates, stated; and principles then applied explained.

The Act to regulate commerce was probably intended to effect similar results, but in its present form and in the absence of the necessary machinery, it is not adequate to afford the relief prayed in the petition. Recommendations of Second Annual Report for amendment of Sec. 3 renewed.

Kentucky and Indiana Bridge Co. vs. Louisville and Nashville R.R. Co. (2 I. C. C. R. 162) referred to, and explained.

U. M. & G. B. Rose, for Complainant.

William M. Baxter, for East Tennessee Virginia & Georgia Railway Co.

John S. Blair, for St. Louis Iron Mountain & Southern Railway Co.

REPORT AND OPINION OF THE COMMISSION.

WALKER, Commissioner:

The Little Rock and Memphis Railroad Company is a common carrier operating a railroad connecting the City of Little Rock, in the State of Arkansas, with the City of Memphis, in the State of Tennessee. Its cars cross the Mississippi River by ferry, and passengers are drawn to and from the passenger station of the East Tennessee Virginia and Georgia road over tracks running through the City of Memphis. Until recently this road formed part of a through line for the transportation of passengers between points east of the Mississippi River and points west and south-west of Little Rock, which traffic formed a considerable part of its business, amounting to about 3,000 passengers per year in both directions. At Little Rock through passengers were transferred to

or received from the trains of the St. Louis, Iron Mountain & Southern Railway Company, reaching a great variety of points in Arkansas, Texas, etc.

In May, 1888, the St. Louis, Iron Mountain & Southern opened a branch line extending from Bald Knob, a point on its main line, 57 miles north-east of Little Rock, to Memphis. Cars over this line are also ferried across the Mississippi River and enter the City of Memphis. The interchange of passengers with the East Tennessee, Virginia & Georgia is usually by stage transfer, although track connections exist which it would be possible to use.

The length of the Little Rock & Memphis road is 135 miles. The distance from Little Rock to Memphis over the new line of the St. Louis, Iron Mountain & Southern, *via* Bald Knob, is 15 miles greater. The time made by the two routes is substantially the same.

After the opening of said new line the St. Louis, Iron Mountain & Southern Railroad Company notified the East Tennessee, Virginia & Georgia that it would accept no through tickets from passengers coming over the line of the Little Rock & Memphis. Thereupon the East Tennessee, Virginia & Georgia discontinued the sale of such tickets, and all tickets which it now sells to the territory in question are over the new line of the St. Louis, Iron Mountain & Southern, *via* Bald Knob to Little Rock. The answer of the East Tennessee, Virginia & Georgia states its position as follows:

“In accordance with a custom of twenty years’ standing, any railroad company so changing its relations towards another as the St. Louis, Iron Mountain & Southern has changed its relation to respondent, has been conceded the right to require immediate connections to take off through tickets to points on its line reading over intermediate lines, and put on tickets reading entirely over its own line for all points reached by its line. In accordance with this custom of long standing and conceded right, respondent admits that it did take off that form of through tickets formerly reading over the Little Rock & Memphis Railroad to points on the St. Louis, Iron Mountain & Southern Railway and points reached thereby.”

The answer of the St. Louis, Iron Mountain & Southern Railway Company admits that since the opening of its Bald Knob Branch it notified the East Tennessee, Virginia & Georgia Railroad to discontinue sales of tickets to points on its line *via* the Little Rock & Memphis road; it admits that it continues to permit sales of such tickets by that Company over its Bald Knob Branch in connection with its main line; it claims the right to discontinue its relations with the former through route, and to insist upon the establishment of a new through route west from Memphis over its own rails exclusively.

The complaint asserts that this proceeding is in contravention of the third section of the Act to regulate commerce, and prays for an order requiring the East Tennessee, Virginia & Georgia, if it sells tickets over said Bald Knob Branch to points south and west of Little Rock, to sell them also over the line of the complainant when requested; and requiring the St. Louis, Iron Mountain & Southern Railway Company to honor tickets reading over the complainant's line and to refrain from further efforts to induce other railroad companies to withhold from sale tickets over the road of the complainant.

The course of business under which this traffic is conducted is substantially as follows:

The line on which the traffic originates prints tickets with coupons reading over the lines of connecting roads, and distributes them for sale at its ticket offices. When such tickets are sold the station agents make return thereof, and the accounting officer reports to connecting lines monthly the amount so received for such lines. The balance found due, after comparison of statements, is paid upon presentation of a draft therefor. These reports are made and the money is accounted for without regard to the performance of the service. The coupons, when taken up, are retained by the company which collects them, for the purpose of checking off the reports received. The method of accounting upon interchange of joint freight traffic is radically different, but need not be stated here.

Through rates over the through route formerly operated *via* the Little Rock & Memphis, or as now existing *via* Bald Knob, are in many instances considerably lower than the local rates which would be collected from a traveler who should buy a ticket from point to point as he passed from one road to another. The rates from Decatur, Chattanooga and other important eastern junction points to Texas cities are to some extent controlled by the rates made by lines *via* Shreveport or New Orleans. This results in the existence of two rates. For example, upon traffic passing from Memphis to Texarkana the sum of the locals gave the Little Rock & Memphis \$5.00, while upon a through ticket from points influenced by competition it received only \$4.44; the fare paid in the first instance was \$9.35, and in the second, \$7.30. In each case an arbitrary sum was allowed the Little Rock & Memphis for the ferry transfer, and the residue was divided as had been previously agreed. In the first case both roads received the standard rate of three cents per mile; in the second case the proportion of the Little Rock & Memphis was somewhat greater per mile than that of the St. Louis, Iron Mountain & Southern.

The Little Rock & Memphis road passes through a very poor country which affords little local traffic; the diversion of the through business which it formerly exchanged at Little Rock with the St. Louis, Iron Mountain & Southern is a very serious loss to its revenue—so serious that in the opinion of its officers it may result in the suspension of its operations. The St. Louis, Iron Mountain & Southern, without conceding that such a result is probable, do not admit that the fact that the other road may be seriously crippled is one which should at all influence their management of their property, and assert their right to go further in the same direction.

The case is tersely stated by the counsel for the St. Louis, Iron Mountain & Southern road as follows:

His company, "rightfully or wrongfully, has notified the East Tennessee, Virginia & Georgia Railroad Company that it shall not act as agent for the sale of certain specified tickets, and if it continues to do so such tickets will not be honored."

The case does not present the question, which has been somewhat argued, of the right of one carrier to refuse to accept tickets sold by another upon grounds of questioned solvency or for other reasons; on the contrary, the St. Louis, Iron Mountain & Southern honors through tickets sold by the East Tennessee, Virginia & Georgia without question, and desires their sale to continue; whatever right it might have under other circumstances to decline to treat the East Tennessee, Virginia & Georgia as its agent in the sale of passenger tickets, that company is its agent for that purpose at the present time.

Nor does this case present the question whether it is the duty of the East Tennessee, Virginia & Georgia to sell through tickets over connecting roads, or whether the Act to regulate commerce is efficient to require the establishment of through routes by connecting roads. That company is now engaged in the sale of such tickets and is operating such a through route. The claim made is, that so long as the East Tennessee Virginia & Georgia sells through tickets to Texas points *via* Bald Knob it cannot legally refuse to sell them *via* the Little Rock & Memphis road also.

This case is not controlled, as counsel claim, by the decision of the Commission in the case of the Chicago & Alton Railroad Company *v.* Pennsylvania Railroad Company, (1 I. C. C. R., 86). In that case the defendant offered to sell tickets over complainant's line upon terms which had been accepted by other lines whose tickets were on sale, but which terms were not acceptable to complainant. Upon that state of facts one Commissioner was of opinion that the condition was not properly required and that a preference was wrought; while the other Commissioners believed that the offer of equal terms to all satisfied the requirement of the statute. In the present case there is simply a refusal to deal with the Little Rock & Memphis Company upon any terms whatever. If equal terms to those given the Bald Knob route were offered, the evidence leaves no room for doubt that they would be cheerfully accepted.

A sentence extracted from the opinion of the Commission in the Chicago & Alton case does not bear the interpretation

placed upon it by counsel, who treat it as deciding that the Act does not undertake to coerce connecting carriers to do business together. The sentence is as follows :

“If companies can agree upon their tariffs, the form of their tickets and how they should be sold, they have the right to do so and by such agreement become interstate carriers ; but if they cannot agree the Act does not undertake to coerce them to do business together upon terms that may be justly objectionable or injurious.”

The last qualifying phrase must not be overlooked. The construction of the Act in respect of requiring the establishment of joint traffic arrangements, upon fair and just terms, remains as yet an open question so far as the decisions of the Commission have extended ; and the question thus stated is not reached in the present case even, which stands, as above shown, upon the ground of prejudice or preference in favor of one existing through route against another which claims the right to participate in the business upon an equal footing.

The English statute of 1854 contained the following language :

“Every railway company, canal company, and railway and canal company shall according to their respective powers afford all reasonable facilities for the receiving and forwarding and delivering of traffic upon and from the several railways and canals belonging to or worked by such companies respectively, and for the return of carriages, trucks, boats, and other vehicles ; * * * and every railway company, canal company, and railway and canal company, having or working railways or canals which form part of a continuous line of railway or canal, or a railway and canal communication, or which have the terminus, station or wharf of the one near the terminus, station or wharf of the other, shall afford all due and reasonable facilities for receiving and forwarding of the traffic arriving by one of such railways or canals by the other without any unreasonable delay and without any such preference or advantage, or prejudice or disadvantage as afore-

said, and so that no obstruction may be offered to the public desirous of using such railways or canals or railways and canals as a continuous line of communication, and so that all reasonable accommodations may by means of the railways and canals of the several companies be at all times afforded to the public in that behalf."

It should first be noted that the words omitted in the above quotation form the substantial part of the first paragraph of Section three of the Act to regulate commerce; they are as follows:

"And no such company shall make or give any undue or unreasonable preference or advantage to or in favor of, any particular person or company or any particular description of traffic in any respect whatsoever, nor shall any such company subject any particular person or company or any particular description of traffic to any undue or unreasonable prejudice or disadvantage in any respect whatsoever."

This language has been dissected from the section in which it originally appeared, and placed as the leading paragraph of Section three of our Act.

The Railway and Canal Traffic Act of 1854 was committed for enforcement to the Court of Common Pleas in England. When a Railway Commission was established by the Regulation of Railway's Act of 1873, said court had been called upon to construe the above section in several instances, and the language found in the act of 1873 was chosen in the light of the decisions of the courts upon the language of the original statute. Under a sub-heading, "Explanation and Amendment of Law," the English Parliament in Section eleven of the Act of 1873, recited Section two of the Railway and Canal Traffic Act of 1854, above quoted, and proceeded as follows:

"Whereas it is expedient to explain and amend the said enactment, Be it therefore enacted, That except as hereinbefore mentioned said facilities to be so afforded are hereby declared to and shall include the due and reasonable receiving, forwarding and delivering by every railway company

and canal company, and railway and canal company, at the request of any other such company, of through traffic to and from the railway or canal of any other such company, at through rates, tolls, or fares (in this Act referred to as 'through rates'); Provided as follows:"

Nine enumerated provisos follow, establishing a system for the enforcement of said enactment, in substance, that the carriers must first endeavor to agree among themselves; failing such agreement the matter may be referred to the Commissioners for their decision, when "the Commissioners shall consider whether the granting of the rate is a due and reasonable facility in the interest of the public, and whether, having regard to the circumstances, the route proposed is a reasonable route, and shall allow or refuse the rate accordingly." Other provisions regulate the apportionment of the through rate by the Commissioners, when a through route is established.

These various provisions obviously are designed to enable a railroad to get itself made part of a through route when facilities for the interchange of traffic are refused by connecting lines, and it has been repeatedly interpreted as having such scope. Applications under it for the establishment of through rates are made by railroad companies solely, and not by or on behalf of the public. (*Great Western R'y Co. v. The Severn & Wye and Severn Bridge R'y Co. and the Midland R'y Co.*, 5 R. & C. Traffic Cases, 174-189.)

Intermediate railroad companies and bridge companies under this statute have repeatedly applied for through rates; and through routes with through rates have been established from time to time by the English Commission. This has been done in instances when the working of the new route would divert traffic from lines operated by existing companies, which were nevertheless compelled to become party to a new through route involving through rates and divisions thereof. The factor which is chiefly looked to, as determining the question of the establishment of a new proposed through route, is the interest of the public therein. The question presented in the statute is met as a question of fact

whether "the granting of the rate is a due and reasonable facility *in the interest of the public*, and whether, having regard to the circumstances, the route proposed is a reasonable route." The reasonableness of the route is also an important element to be considered, depending upon distance, expense of working and other like considerations. (See case cited above, decided January 27, 1887).

The Act to regulate commerce does not contain the provisions of detail found in the English act of 1873, and re-enacted with some further modifications in the English Railway and Canal Traffic Act of 1888. The language of our statute, which very greatly condenses the corresponding section of the English law, is as follows :

"Every common carrier subject to the provisions of this Act shall, according to their respective powers, afford all reasonable, proper and equal facilities for the interchange of traffic between their respective lines, and for the receiving, forwarding and delivering of passengers and property to and from their several lines and those connecting therewith, and shall not discriminate in their rates and charges between such connecting lines."

It is to be observed that while the English statute requires "reasonable facilities" our statute demands "reasonable, proper, and equal facilities"; the words "proper" and "equal" being added. Our act also adds the phrase "and shall not discriminate in their rates and charges between such connecting lines." This phrase, together with the word "equal," were added in Congress to the bill as originally prepared and introduced by the Select Committee on Interstate Commerce.

The rules of construction and application established in the provisos to the English statute are manifestly just, and this Commission in its Second Annual Report (page 70) has recommended the amendment of our third section by adding a provision which would substantially incorporate the same rules into our law in terms. Nevertheless the Commission does not find in the section as it now stands an intention to

go beyond those principles which have been established by the English legislation and decisions as above summarized. In other words, it is conceived that facilities conceded to a through route only become reasonable and proper when they are demanded in the interest of the public and when the route of itself is fairly reasonable. As is stated in the decision above referred to, "It is sufficient that it should be such a route as we might fairly expect, other things being equal, a substantial portion of the traffic to go by, neither unnecessarily long nor unreasonably complicated, nor having any other decided disqualification; but certainly it need not be the best route." And in the same opinion the question of public interest is said to turn upon the consideration that "it is the interest of the public that there should be at least two routes open between any two given places, provided that those routes are practically independent of one another, fairly alternative, and reasonably calculated to keep one another in check. Mere paper competition would not be for the public interest; nor would such competition be for the interest of the public if it could only be maintained on terms ruinous to one or both companies. Healthy competition such as I have described would be generally in the public interest."

In the light of these considerations there can be little doubt that the line here in question is one that under the English law would be regarded as a reasonable route, and one the retention of which would be considered to be in the interest of the public; in fact it is fifteen miles shorter than the route now in use between Memphis and Little Rock, and it is a route of long standing, only recently discontinued. A new line has been established by a powerful competitor which is physically competent to handle the traffic; the interest of the public, however, fairly seems to require that the old line should be kept open as part of a through route from Memphis and points east thereof to Little Rock, and points west and south thereof. The East Tennessee, Virginia and Georgia Railway, in selling its tickets to points beyond Little Rock, discriminates against the Memphis and

Little Rock Railroad, by refusing to sell tickets reading over this line; this results in exacting higher rates from passengers seeking this route than for through tickets sold *via* Bald Knob. Such passengers are compelled to buy tickets from point to point at local rates, and they are deprived of the facilities which through tickets and through checking of baggage afford.

Giving to the words of the third section the interpretation received by the present English Statute, and applying that interpretation to the facts of the present case, it would require the two defendant roads to afford complainant equal facilities for the interchange of traffic between their respective lines, and for the receiving, forwarding, and delivering of passengers to and from their several lines; facilities "equal" to those afforded any other line, provided only that the proposed route is a reasonable route and one the opening or the maintaining of which is fairly in the interest of the public. Our law also adds the prohibition against discrimination in rates and charges between connecting lines—a prohibition which easily fits the present case, in view of the fact that travel seeks the cheapest route, and that the through rates in force over the Bald Knob route are in many cases considerably lower than the local rates which are alone available to passengers choosing complainant's line.

The contention would still remain open to the defendants, however, that a carrier has a right to discriminate in its own favor; that it is not intended to be restrained by the law from taking to itself all possible traffic that its own line can advantageously handle; and that it is not to be compelled to divide business with a competitor by affording equal facilities therefor between points where its own road is parallel.

In this aspect the defense of the East Tennessee, Virginia & Georgia is, that the St. Louis, Iron Mountain & Southern Company, controlling the various routes beyond Little Rock, requires it to sell tickets *via* Bald Knob exclusively, for the purpose of throwing all the through travel between Memphis and Little Rock upon the new line of the Iron Mountain

Company; and it says that it would not be justified in selling tickets to passengers *via* the Little Rock & Memphis road, knowing in advance that such tickets would not be accepted when offered for transportation beyond Little Rock. This position is admitted by the St. Louis, Iron Mountain & Southern Railway Company to be correct, and it justifies its action by saying, in substance, that it refuses to accept through tickets from the East Tennessee, Virginia & Georgia, over the Little Rock & Memphis road when tendered by passengers coming upon its cars at Little Rock, in the exercise of a right to do so, which it claims upon the theory that while discrimination between connecting lines is forbidden, the law does not forbid it to discriminate in favor of a section of its own line as against a competing line.

This claim presents an aspect of apparent justice, which has a tendency to conceal from view the public considerations which may be conceived to have been present in the framing of a law designed to promote and facilitate the unrestricted ebb and flow of the internal commerce of the United States; an Act which contains a provision apparently designed to insure to the people every facility of equal choice which franchises granted in the public interest can by any combination of reasonable routes afford. The section contains no proviso excluding lines owned by the discriminating carrier; the terms of the law are general; the language used in this respect cannot fairly be given any different interpretation from that which the English statute of 1854 should receive; and there has been no hesitation whatever in the affirmation that the English law applies as well to cases where business is sought to be divided with the carrier controlling the rate, as to cases where the rights of other carriers only were involved.

The case of the Swindon, Marlborough & Andover Railway Company *v.* The Great Western Railway Company and the London & South-Western Railway Company; 4 Railway and Canal Traffic Cases, 349; decided by the English Railway Commissioners in July, 1884, is directly in point. This was an application under the procedure prescribed in the English Act of 1873, for participation in certain traffic from which the

complainant company had been theretofore excluded. The proposed route was 21 miles shorter than the route in use, between points 120 miles apart by the existing route. The defendant companies contended, however, that—

“The difference of distance notwithstanding, the proposed route and rates would be of no benefit to the public, * * * and that it would be hard upon them that a third company should be admitted to participate in the receipts from its business.”

The Commission say:

“But we doubt if the Act of 1854 would allow us to give weight to this consideration of the hardship. The disadvantage to the Great Western of the new route is that the junction at which the traffic turns off from their lines is at a less distance from Gloucester than Basingstoke, and that, receipts from through traffic being divided by mileage, their proportion would be materially less on traffic sent by this route than on traffic carried by Basingstoke. They would carry in the one case 86 miles out of a total distance of 120 miles, and in the other only 36 miles out of a total of 100. But these interests of the Company would not entitle them, as to traffic of the same description going between the same places, to treat it so unequally on their own line as to work it at through rates if passing off their line at one point, but if at another to refuse it that facility. That would be to give an undue preference to one portion of it. * * * Rates then that exclude traffic from the shorter of these two through routes, and confine it to the longer, cannot but be at the expense of public policy; and though the quantity of the traffic may be insignificant, and equal rates may not have much effect in developing through traffic by Andover, we think it a principle of importance to the public that a route between places affording the best opportunities for railway carriage, as far as distance is concerned, should not be placed at a disadvantage merely because portions of the route belong to railway companies which have an alternative route and make lower charges in favor of the latter.”

The proposed through rates were allowed by the Commis-

sion, and the case is an unqualified affirmation that under the English Act of 1854 an illegal preference may be wrought by a discrimination in favor of a line worked by the very carrier which refuses to unite in the through rate desired.

The same case proceeds to consider other proposed rates, upon coal, in respect to which it finds that the proposed route is ten miles longer than the existing route ; that it has a greater length of single track ; that it has a steep rising gradient ; that the tendency of these circumstances is to give a slower service, that it is not "important in this case to have a second railway route to secure the benefit of a free competition, for the traffic can be and is carried by sea from Cardiff and other ports, and the freights which are charged not only regulate the charges of other modes of conveyance, but are almost below remunerative rates for land conveyance. As far, therefore, as competition is a motive to give facilities for railway transit, and operates to ensure good management for the traffic, the Severn Bridge route has this stimulus already."

The conclusion reached was that the granting of the latter rates was not a facility in the interest of the public, and that they ought consequently to be refused.

This case in its two branches very clearly illustrates the method pursued by the English tribunals in dealing with the question under consideration. There can be no doubt but that the principles there adopted would be held sufficient to entitle the Little Rock & Memphis Company to the establishment of the through route desired ; its line unquestionably affords a reasonable route for the traffic in question, and the preservation of a competing route is in the public interest. The distance is a trifle shorter than the distance over the line now worked ; and the fact that the maintenance of the through route desired would operate to divide the traffic with the St. Louis, Iron Mountain & Southern road is no reason for refusing the extension of equal facilities.

The Commission believes that it was the intention of Congress in the third section to substantially re-enact the requirements of the English Statute. This is not the only instance

in which the Act to regulate commerce has embodied in condensed language the substantial ideas of English legislation concerning railroads. Serious difficulties, however, are met in attempting to apply such a construction of the law to the present case. Section fifteen of the Act to regulate commerce makes it the duty of the Commission, in case of a violation of the law, to issue notice to the offending carrier to cease and desist from such violation within a reasonable time to be specified. A notice to cease and desist from further violation of the law, without more, would not cover all that is here required in order to affect any useful result, and in fact would not be operative unless supplemented by something further, which the Commission has no present power to give. The restoration of the through tickets and through rates necessarily involves a division of the rates, which must either be ascertained as a necessary preliminary, or some method of determining the share which each carrier is to receive must be known to exist. In case the ferry transfer arbitrary and the proportionate divisions of the various rates can be agreed upon by the parties it would be possible for the business to go forward at once. But if the parties fail or refuse to agree there is no method apparent in which a binding apportionment can be made. This fact clearly shows a case of omission in the law, of the precise nature of the omission in the English statute of 1854, which was remedied by the subsequent Act passed in 1873. Interchange of freight would also involve other questions. In its Second Annual Report (page 70) this Commission stated that in its opinion the interest of the public would be subserved by amending the third section of the Act to regulate commerce by adding thereto a provision substantially extracted from the English Act of 1873, as further amended by Parliament in 1888, as follows:

“The facilities to be so afforded shall include the due and reasonable receiving, forwarding and delivering by every such common carrier, at the request of any other such common carrier of through traffic at through rates or fares. If any one of such common carriers shall desire to form a through route for interstate traffic or any class thereof over

its own line or any part thereof, in connection with the line, or any part of the line of one or more other common carriers, it shall address a request in writing to the other common carrier or carriers, describing therein the proposed route specifically, and naming proposed through rates or fares and divisions thereof for such traffic, and shall deliver such request to such other carrier or carriers and also transmit a copy thereof to the Commission hereinafter named. If the other common carrier or carriers shall not, within ten days after receiving such request, make and serve and file with the Commission, written objections either to the proposed route or to the proposed rates, fares, or divisions, the same so far as not objected to shall be deemed agreed to; but if either the route, the rates, or fares, or the divisions, are objected to, the objections shall be stated in writing and transmitted to the Commission, and the Commission shall then have power to determine whether, having regard to all the circumstances, the route proposed is demanded in the public interest and is a reasonable route for the traffic, and if the Commission shall so find, and the rate or divisions are not assented to, the Commission shall have the further power to prescribe the same; but the Commission in any case, in apportioning the through rate, shall take into consideration all the circumstances of the case, including any special expense incurred in respect of the construction, maintenance or working of the route, or any part thereof, as well as any special charges which any such common carrier may have been entitled to make in respect thereof, and it shall not be lawful for the Commission in any case to compel any company to accept lower mileage rates than the mileage rates which such company may for the time being legally be charging for like traffic carried by a like mode of transit, on any other line of communication between the same points, being the points of departure and arrival of the through route."

The facts in the present case clearly develop the importance of such an amendment, or of some amendment which shall provide a mode of procedure for carrying into effect the

establishment of through routes and through rates, and the equitable apportionment of the rates established, in cases where the refusal of such routes and rates works an unlawful preference. As the Statute now stands there is no way apparent in which practical relief can be afforded to the complainant without authority to provide for the necessary divisions being conferred either upon the Commission, the courts, or some other tribunal.

It is proper to add that the foregoing opinion was written before seeing the opinion of the United States Circuit Court in the case of the Kentucky and Indiana Bridge Company v. The Louisville & Nashville Railroad Company, recently rendered in the Sixth Judicial Circuit (Jackson J). In passing upon the original complaint of the Kentucky & Indiana Bridge Company, this Commission (2 I. C. C. R., 162) expressly stated that no case was before it involving the question of through rates. The case as made up for the decision of the Circuit Court, was a very different case from that which had been previously passed upon by this Commission. The convenience of the junction point in question for the interchange of traffic was conceded by the defendant before the Commission, but afterwards litigated before the Court. The case was moreover so presented that the Court was called upon to decide the precise point in respect to through rates, which the Commission had explicitly refrained from passing upon. In respect to this question the Interstate Commerce Commission in the present case has for the first time been required to express its views on the construction of the law; and it believes that while it was apparently the intention of Congress to require the establishment and maintenance of a through route with through rates, in cases like the one now under consideration, nevertheless, the Act in its present form, and in the absence of the necessary machinery, is inadequate to satisfactorily accomplish the result without the co-operation of carriers in arranging for the division of rates and other necessary agreements.

The recommendations concerning amendments to the Third

Section of the Act which were made in the Second Annual Report are therefore again renewed.

MORRISON, *Commissioner*;

I concur in the opinion that the East Tennessee, Virginia & Georgia Railroad should issue tickets over the complainant's road on the same terms it issues them over the St. Louis, Iron Mountain & Southern Railway Co., for reasons expressed in my dissenting opinion in the case of the Chicago & Alton R. R. Co. v. Pennsylvania R. R. Co. (1 I. C. C. R., 86).

SCHOONMAKER, *Commissioner*, concurs in result.

IN THE MATTER OF THE TARIFFS AND CLASSIFICATIONS OF THE ATLANTA AND WEST POINT RAILROAD COMPANY AND OTHER COMPANIES.

Hearing December 18th, 19th and 20th, 1888.—Opinion Filed March 30, 1889.

Investigation by the Commission, on its own motion, concerning cause pursued by certain carriers in respect to compliance with the provisions of the Act to regulate commerce.

Results as ascertained stated, and recommendations made for further advances in the direction of conformity to the law.

Short haul clause, principles giving application of as heretofore announced by Commission, and again affirmed, and applied.

Form of tariffs and classifications in use criticised and requirements of statute stated in respect thereto.

Cecil Gabbett, General Manager, and *Charles H. Cromuell*, General Freight and Passenger Agent, for Atlanta & West Point Railroad Co., and Western Railway Company of Alabama.

E. P. Alexander, President, *W. F. Shellman*, Traffic Manager, *G. A. Whitehead*, General Freight Agent, and *E. T. Charlton*, General Passenger Agent, for Central Railroad and Banking Co. of Georgia, Mobile & Girard Railroad Co., Montgomery & Eufaula Railroad Co., Port Royal & Augusta Railway Co., Savannah, Griffin & North Alabama Railroad Co., *William J. Craig*, Acting General Freight and Passenger Agent for Port Royal & Augusta Railway Co.

C. D. Owens, Traffic Manager for Savannah, Florida & Western Railway Co. and Charleston & Savannah Railway Co., *William P. Hardee*, General Freight and Passenger Agent for Savannah, Florida & Western Railway Co., and *E. P. McSwiney*, General Freight and Passenger Agent for Charleston & Savannah Railway Co.

James T. Worthington, General Counsel, *Linden Kent*, Assistant General Counsel, *T. M. R. Talcott*, First Vice-President, *Sol. Haas*, Traffic Manager, *James H. Drake*, General Freight Agent, *J. S. Potts*, Division Freight and Passenger Agent, *W. H. Fitzgerald*, Agent, and *Reuben*

Foster, for Richmond & Danville Railroad Co., Charlotte, Columbia & Augusta Railroad Co., and Columbia & Greenville Railroad Co. *Sol. Haas*, Traffic Manager, also for Associated Railways of Virginia and the Carolinas, including the Atlantic Coast Line and the Seaboard Air Line. *G. S. Barnum*, General Freight and Passenger Agent for Georgia Pacific R. R. Co.

John C. Gault, General Manager, and *Robert X. Ryan*, General Freight Agent, for Cincinnati, New Orleans & Texas Pacific Railway Co., Vicksburg & Meridian Railroad Co. and other roads of the "Queen and Crescent" line.

William M. Baxter, General Solicitor, and *Edwin Fitzgerald*, Traffic Manager, for East Tennessee, Virginia & Georgia Railway Co. and Memphis & Charleston Railroad Co.

John W. Green, General Manager, and *E. R. Dorsey*, General Freight and Passenger Agent, for Georgia Railroad and Banking Co.

Edward Baxter, Attorney, *Milton H. Smith*, Vice-President, *E. B. Stahlman*, Third Vice-President, *Stuart R. Knott*, Traffic Manager, and *Basil W. Duke*, for Louisville & Nashville Railroad Co., including the Mobile & Montgomery Railroad Co., and South & North Alabama Railroad Co.

J. W. Thomas, President and General Manager for Nashville, Chattanooga & St. Louis Railway Co.

Charles G. Eddy, Vice-President, *Augustus Pope*, General Freight Agent, *W. B. Bevill*, General Passenger Agent, for Norfolk & Western Railroad Co.

F. W. Clark, General Freight and Passenger Agent for Seaboard & Roanoke Railroad Co.

Joseph M. Brown, General Freight and Passenger Agent for Western & Atlantic Railroad Co.

H. Walters, Vice-President, and *T. M. Emerson*, General Freight and Passenger Agent, for Atlantic Coast Line, including the Wilmington & Weldon Railroad Co., and Wilmington, Columbia & Augusta Railroad Co.

William H. Halsey, Chief Rate Clerk for Southern Railway & Steamship Association.

REPORT AND OPINION OF THE COMMISSION.

WALKER, *Commissioner*:

On the 22d of October, 1888, an order of notice was made by the Commission in the above-entitled matter as follows:

“It appearing to the Commission upon an inspection of the tariffs and classifications published and filed by the carriers hereinafter named, which are associated for certain purposes under the name of the Southern Railway and Steamship Association, as well as by information and complaints received from time to time, that such carriers in many cases make a greater charge for the transportation of a like kind of property for a shorter than for a longer distance over the same line in the same direction upon interstate traffic; and that the disparity between the charges made at different points over the same line is in some instances apparently very great as related to distance; and that there is reason to believe that the requirements of section 6 of the Act to regulate commerce are not complied with in the filing and publishing of many of said tariffs, in this, among other things, that the rates actually charged to shippers are not the rates given upon said schedules, but so-called combination rates are made, different from the rates specified in the tariffs as published and filed, upon both local and joint interstate traffic; and that the classifications in use are complicated and involved, containing many exceptions and variations, different classifications being at times used upon the road of the same carrier for the shipment of the same commodities to neighboring points, and at times two or more classifications being employed upon the same shipment in fixing a so-called combination rate upon the line of a single carrier, or of two or more connecting carriers; and that the tariffs as filed, and without explanation, are apparently not in form sufficient for the information of the public in the transaction of business; and that special tariffs are issued upon single shipments, and are limited in time; and that said tariffs and classifications in other respects do not appear to conform to the provisions and requirements of the Act to regulate commerce; and that

an investigation and inquiry should be had in respect to said matters;

“It is thereupon ordered that the following-named carriers, to wit:

Atlanta & West Point Railroad Company,
Central Railroad & Banking Company of Georgia,
Charleston & Savannah Railway Company,
Charlotte, Columbia & Augusta Railroad Company,
Cincinnati, New Orleans & Texas Pacific Railway Company,
Columbia & Greenville Railroad Company,
East Tennessee, Virginia & Georgia Railway Company,
Georgia Railroad & Banking Company,
Louisville & Nashville Railroad Company,
Memphis & Charleston Railroad Company,
Mobile & Girard Railroad Company,
Mobile & Montgomery Railroad Company,
Montgomery & Eufaula Railroad Company,
Nashville, Chattanooga & St. Louis Railway Company,
Norfolk & Western Railroad Company,
Port Royal & Augusta Railway Company,
Richmond & Danville Railroad Company,
Rome Railroad Company,
Savannah, Florida & Western Railway Company,
Savannah, Griffin & North Alabama Railroad Company,
Seaboard & Roanoke Railroad Company,
South Carolina Railway Company,
South & North Alabama Railroad Company,
Vicksburg & Meridian Railroad Company,
Western & Atlantic Railroad Company,
Western Railway Company of Alabama,
Wilmington & Weldon Railroad Company,

Wilmington, Columbia & Augusta Railroad Company,
and such other carriers as may hereafter be named, operating in the same territory with those above enumerated, or connecting with them, appear before this Commission at Washington, D. C., on December 18, 1888, at 11 o'clock a. m., for the purpose of a general examination and investigation of

their tariffs and classifications as on file in the office of the Commission, and as in use upon their lines, respectively; to the end that an opportunity may be then and there given to said common carriers to be heard concerning the same, and in respect to the method of constructing interstate rates therefrom as practiced upon said lines, respectively, or in connection with other lines; and that any changes may be made which shall be found necessary and proper in order to bring said tariffs and classifications, and the manner of transacting business thereunder, into more complete conformity with the provisions of the Act to regulate commerce."

Pursuant to the notice so given, representatives of the various carriers named appeared before the Commission on December 18, 19 and 20, 1888, and an examination was made in respect to the matters recited in the Order. Reference has also been had to testimony previously given on various occasions, as well as to tariffs, classifications and other documents on file. Section fourteen of the Act to regulate commerce requires the Commission to make a report in writing, which shall include the findings of fact upon which its conclusions are based, together with its recommendations thereon.

It will be observed that the roads named in the order embrace the principal lines operating in the territory south of the James and Ohio Rivers, in the States of Virginia, North Carolina, South Carolina, Georgia, Alabama and Tennessee, being the territory within which rates have heretofore been to a large extent controlled by the rail and water lines comprised in the Southern Railway and Steamship Association. Rates within that territory, however, are affected to such an extent by conditions existing upon other lines in its vicinity that it has been found necessary to somewhat extend the field of investigation.

The status of the carriers engaged in the transportation of passengers and property to, from and among the States above named is so different from that of carriers in the Eastern, Middle, and Western States, and the methods employed are so variant from those of carriers in most other sections of the country, that a careful statement of facts is necessary, for the

purpose of clearly exhibiting the principles applicable to the conditions which prevail in the Southern States, and of emphasizing the fact that conclusions reached in respect to this territory are not controlling everywhere. The chief differences will be found in the fact that the territory in question is substantially surrounded by the ocean and the mighty rivers which bound it on the North and West, while it is penetrated to a considerable extent by other navigable streams; and in the further fact that the traffic is relatively small in amount, the annual gross earnings per mile of road being considerably less than in most of the Eastern, Northern and Western States. In addition to these elements of diversity it is a characteristic of this section that many lines exist over which traffic to or from distant markets may be taken in either direction, with equal facility; and it is also peculiarly true that long-established usage has here created a system of so-called "trade-centers" which control the collection and distribution of commodities throughout the territory in their vicinity; a course of business which has become so firmly grounded that the territory surrounding these local centers is frequently spoken of as naturally tributary to them.

Previous to the passage of the Act to regulate commerce it was the universal custom in this section of the country to establish rates to certain basing points, subject to fluctuations occasioned by competition and otherwise, while rates to and from all other points were obtained by adding the local charges of the various terminal or initial roads to the rates at the basing points. These points were selected by reason of their situation upon navigable streams, or at the junction of railroad lines, or as determined by other considerations; their number was large. The result of the system was that rates quite reasonable, and in some cases low, were given to and from the basing points; and that goods were thence distributed at high local charges in all directions. For example, the rates from New York or Chicago to Atlanta, plus the rate from Atlanta to local points north, east, south and west therefrom, were the rates charged from New York or Chicago to the latter points direct; and the latter rates were usually very much in excess of rates to distributing

points situated at a greater distance over the same line in the same direction. While this method was satisfactory to the centers which it created and maintained, the smaller towns and rural communities protested against a system which worked so obviously to their disadvantage. Since the passage of the Act the number of these favored localities has decreased in the Southern States, and upon many of the lines the disparity in rates as between them and intermediate or local stations has been diminished. So far as passenger traffic is concerned the rates are generally, if not universally upon a mileage basis ; except upon a few of the weakest roads they are three cents per mile.

The application to freight traffic in this territory of the fourth section of the Act, which makes it unlawful for the carriers to "charge or receive any greater compensation in the aggregate for the transportation of passengers or of like kind of property, under substantially similar circumstances and conditions, for a shorter than for a longer distance over the same line in the same direction, the shorter being included within the longer distance," was carefully considered by the Commission soon after its organization, and the conclusions then reached were set forth in its opinion "In the Matter of the Petition of the Louisville & Nashville Railroad Company." (1 I. C. C. R., 31). That opinion stated that competition not subject to the regulation of the Act might constitute the circumstances and conditions recognized by the section as exceptional ; the Commission has seen no occasion as yet to vary from the construction of the law then reached, or from the principles then indicated as governing its application. The manner in which interstate rates should be constructed in order to conform to the requirements of the Act, was necessarily left, in the first instance where the law left it, to the judgment of the various carriers. The present inquiry involves the question of how far their conduct hitherto has conformed to the law as then interpreted, and to the recommendations then made.

The following transportation lines are now members of the Southern Railway and Steamship Association, to wit :

Central Railroad & Banking Company of Georgia,
Ocean Steamship Company of Savannah,
Port Royal & Augusta Railway Company,
Georgia Railroad Company,
East Tennessee, Virginia & Georgia Railroad Company,
Richmond & Danville Railroad Company,
Georgia Pacific Railway Company,
South Carolina Railway Company,
Clyde Steam Lines,
Western & Atlantic Railroad Company,
Old Dominion Steamship Company,
Wilmington & Weldon Railroad Company,
Seaboard & Roanoke Railroad Company,
Merchants' & Miners' Transportation Company,
Baltimore, Chesapeake & Richmond Steamboat Com-
pany,
Atlanta & West Point Railroad Company,
Western Railway Company of Alabama.

This Association publishes a Classification of freight "for the use of the lines between Eastern and Western points and Southern points," the last issue of which took effect September 1, 1888. Supplements were issued December 5, 1888, and February 27, 1889, containing changes and additions. The Association also publishes a pamphlet, the last issue of which is entitled as follows: "Class and special rates of freight between Eastern, Western, and Coast cities and Southern points, in effect September 30, 1888." This pamphlet bears upon its cover a notation, "For the use of officers and employees of transportation companies only;" and is furnished to transportation companies at cost, on application to the office of the Commissioner at Atlanta, Georgia. It is intended for their use in preparing the tariffs which it is customary for each line to publish for itself. For example, the Associated Railways of Virginia and the Carolinas issue monthly a pamphlet entitled "How to Ship," giving rates from New York, Philadelphia, Boston, Providence, and Baltimore, to all points in the Southern States reached over the lines named, including points on roads as far distant as the

Texas Pacific. The stations upon each line are named in their natural order, including competitive points and locals, and a general index is also given. A similar publication of the Savannah Freight Line, operating over the roads of the Central Railroad & Banking Company of Georgia, is entitled "The Best Way to Ship." These publications are quite generally distributed among shippers, and are readily obtainable; they comprise nearly one hundred closely printed pages each, and are constructed from the rates issued by the Southern Railway and Steamship Association, by the use of methods which will be more particularly hereinafter described.

An examination of the Association pamphlet shows that it purports to contain "all authorized class and special rates between the points named, except rates on cotton and pig iron, which will be found in special Circulars." The class rates given are between various Eastern, Western and Coast cities, and what are called "Association points." It becomes important at the outset to know what are these "Association points," and why they are selected in naming rates. From Boston, New York, Philadelphia, and Baltimore the following points are given:

Anniston, Birmingham, Eufaula, Montgomery, Opelika, and Selma, Alabama; Albany, Athens, Atlanta, Augusta, Cedartown, Columbus, Dalton, Elberton, Macon, Milledgeville, Rome and Washington, Georgia; Chattanooga, Tennessee.

In naming rates from St. Louis, Cincinnati, Chicago, Louisville, and other Ohio River points, the following are given: Anniston, Birmingham, Eufaula, Montgomery, Opelika, and Selma, Alabama; Albany, Athens, Atlanta, Augusta, Brunswick, Cedartown, Columbus, Dalton, Elberton, Fort Gaines, Macon, Milledgeville, Rome, Savannah, and Washington, Georgia; Chattanooga, Tennessee; Charleston and Port Royal, South Carolina; Fernandina and Jacksonville, Florida.

An examination of the map shows that the points named are some of them situated upon the ocean, some of them upon navigable rivers, and others are railroad junction points. Athens and Elberton are at the end of the spurs running south from the Richmond & Danville main line; Athens is

also reached by a branch of the Georgia Railroad; Cedar-town is a comparatively unimportant junction point northwest of Atlanta; Albany is the junction point of lines from the north and west with the Savannah, Florida & Western Railroad; Dalton, forty miles south of Chattanooga, is the crossing point of the East Tennessee, Virginia & Georgia with the Western & Atlantic; Columbus, Eufaula, and Fort Gaines are on the Chattahoochee River, and Opelika is a railroad crossing point twenty-nine miles northwest from Columbus; Montgomery and Selma are on the Alabama River, with a regular steamboat line to and from Mobile; Augusta, Georgia, is on the Savannah River, about 130 miles from Savannah by rail; Washington is the termination of a branch of the Georgia Railroad; Milledgeville and Rome are junction points. The location of the other points named is sufficiently well understood. The list does not by any means include all the junction points in the territory referred to. Most of the places named, however, are reached by more than one line of road, although some of them, like Elberton, Washington, and Fort Gaines, are simply terminals.

Rates between Boston and the various "Association points" are the same as between New York and the same points. The Philadelphia rates are likewise the same, except to Chattanooga, Birmingham, Montgomery, and Selma, where they are less than New York by the amount of the Trunk Line differentials customarily applied between Philadelphia and Western cities. Baltimore rates are a little lower than Philadelphia rates.

Taking the New York rate as a representative of rates from the eastern cities to Association points, it appears that the framers of the Association pamphlet have recognized the existence of a combination of forces which they deem it essential to regard in the establishment of the tariffs under consideration. Of these the most important one consists in the existence of several steam ocean lines, long established and well known, which ply with regularity from the various eastern cities to various southern ports, including Norfolk, Wilmington, Charleston, Port Royal, Savannah, and Bruns-

wick. These steamship lines are operated in connection with railroad lines running from said ports into the interior, and form combined rail and water routes, competing with the all-rail lines over the East Tennessee, Virginia & Georgia and the Richmond & Danville from the eastern cities into the same territory.

The rates made by these rail and water lines are quite steadily maintained; several of the steamship lines, as above shown, are members of the Southern Railway and Steamship Association and operate under the Association tariffs in transportation to interior points. Rates to coast points, however, are not published by the water lines. There are also other water lines which are not members of the Association, and there is considerable interchange of traffic by schooners and other sailing vessels.

Taking the rate to Atlanta as an illustration, it will be seen that the tariff from New York to Atlanta, first-class, is \$1.14. The statement is made that the rate from New York is as high as the ocean rate to southeastern ports plus the inland rates from those ports to Atlanta will permit. The rate of 69 cents, first class, is named in the pamphlet as in force between Atlanta and Charleston, Port Royal, Savannah and Brunswick. This rate has been agreed upon by the various lines between Atlanta and the southeastern ports.

The rail lines from Savannah to Atlanta and from Brunswick to Atlanta are wholly within the State of Georgia. That State has a Railway Commission, which for several years has exercised quite extensive powers in the regulation of transportation charges. The rate above stated as established from the sea-coast to Atlanta has received the approval of the Georgia State Commission, although by all the lines charges are higher from the coast to intermediate points than to Atlanta; and the same is true of rates in the reverse direction. The State Commission has established a classification which is in force upon all railroads in the State of Georgia, containing twenty-two classes, six designated by numbers and the remainder by letters, from A to R. The lower classes, however, are substantially commodity lists,

embracing only one or two articles each, and the general basis of the classification does not largely differ from the Classification of the Southern Railway and Steamship Association, which has been adapted to what the State Commissioners understand to be the local requirements of the State of Georgia. In applying this classification the Commissioners have established what is termed a "Standard Freight Tariff," giving rates for each class for distances of 5, 10, 15, and 20 miles, etc., up to 450 miles. This "Standard Tariff" is subject to special rules in respect to each road, varying according to their several local or financial conditions, and resulting in authority to make rates usually considerably larger than the standard rates. For example: The Central Railroad and Banking Company of Georgia, Savannah to Macon (192 miles), and the East Tennessee, Virginia and Georgia Railway, Brunswick to Macon (192 miles), are authorized on Classes 1 2 3 4 5 6 A E G and H, to add to the standard tariff as follows:

Between nothing and 40 miles, 50 per cent.

Between 40 and 70 miles, 40 per cent.

Between 70 and 100 miles, 30 per cent.

Over 100 miles, 20 per cent., etc.

Said Commission also issues rules governing the transportation of freight which provide, among other things, as follows:

"For distances under 20 or over 250 miles a reduction of rates may be made without making a change at all stations short of 250 miles; provided, however, that when any railroad shall make a reduction of rates for distances over 250 miles the same shall apply to similar distances on all the roads controlled by the same company, and in no case shall more be charged for a less than a greater distance."

" * * * But when from any point in this State there are competing lines, one or more not subject to the jurisdiction of the Commission, then any line or lines which are so subject may at such competing point, or other points injuriously affected by such competition, make rates below the

standard tariff to meet such competition without making a corresponding reduction along the line of the road; provided, that before taking effect, the proposed change in rates shall be submitted to and approved by the Commission, and published as required by law."

Under this system rates upon roads wholly within the State of Georgia have been established from Savannah and Brunswick on the sea coast, to Atlanta, Macon, Augusta and other interior points, which are less than the rates charged by the same roads to intermediate points. In constructing tariffs from New York City and other eastern cities *via* Savannah and Brunswick, to interior points in Georgia, the authorized State rates are customarily added to the agreed ocean rates. In this way rates are established which all-rail routes from the eastern cities to the same points must accept if traffic is taken.

A relation also appears between the rates from eastern cities to Atlanta and those from western cities to the same great center of distribution, and other points similarly situated. The pamphlet of the Southern Railway and Steamship Association names rates from Cincinnati and other Ohio river points, to Atlanta, first class, \$1.07; St. Louis to Atlanta, \$1.35; Memphis, Huntington, Vicksburg and New Orleans to Atlanta, \$1.03; Chicago to Atlanta, \$1.47. Special commodity rates are given from the western cities on many important articles.

Returning to the New York City rate of \$1.14, first class, to Atlanta, it appears that the same rate is also in force to Athens, Columbus, Dalton, Elberton, Rome and Washington, Georgia; Anniston, Birmingham, Eufaula, Montgomery, Opelika and Selma, Alabama; and to Chattanooga, Tennessee. The rate to Augusta, Georgia, is 96 cents; to Macon and Milledgeville, \$1.09, and to Albany, Georgia, \$1.27.

The Augusta rate of 96 cents is claimed to be made by adding the Georgia State rate of 41 cents, Savannah to Augusta, to the ocean rate of 55 cents, New York to Savannah. It is observed, however, that in making additions from

ocean points to interior points the ocean proportion of the through rate is variable, for example :

New York to—	Railroad.	Ocean.	Total.
Atlanta.....	69	45	114
Augusta	41	55	96
Birmingham	74	40	114
Albany	91	36	127

Taking Louisville as a sample of the Ohio river and western points, the Southern Railway and Steamship Association pamphlet gives lower rates to southeastern coast points than to any, even the competitive, interior points. The first class rate to Savannah, Port Royal, Charleston and Brunswick, is 95 cents. The rate on Class D (corn, etc.), to the same points, in December, 1888, was 20 cents. From Louisville to Anniston, Athens, Atlanta, Augusta, Cedartown, Columbus, Eufaula, Macon, Opelika and Rome, first class, \$1.07; Class D, 27 cents; in some cases 29 cents.

Louisville to Montgomery,					
Birmingham,					
Selma,	1st Class	.98;	Class D,	.20	
Albany,	" "	1.62	" "	.31	
Elberton,	" "	1.21	" "	.33	
Fort Gaines,	" "	1.17	" "	.33	
Milledgeville,	" "	1.15	" "	.31	
Washington,	" "	1.21	" "	.33	

When making rates into this territory from Chicago, St. Louis and other points northwest of the Ohio river, differentials are added, representing the proportions of the lines beyond the Ohio.

In explanation of the low rates from the northwest to the southeastern ports, the statement is made that they are as high as the rates through the eastern cities, and thence by ocean to the same ports will permit; rates have been made on grain, Chicago to Baltimore *via* Savannah, one cent per hundred pounds higher than the established trunk line rate, Chicago to Baltimore, which is usually 22 cents.

The general plan of the construction of the rates named in said pamphlet from eastern cities, and from the northwest to Association points, so called, having been thus explained, it is next necessary to consider the manner in which rates between the same cities and intermediate points upon the lines of the various southern roads are made. As above stated, they were usually built upon the through rates to the nearest Association point by the addition of the local tariffs of the various roads. This statement, however, is subject to considerable modification at the present time in respect to many of the lines; in fact, there is no common system now in force; one or two of the lines still retain and apply the old system of adding locals, under local classifications, to the established Association point rates; other lines have modified this system by conforming in greater or less degree to the principle of the fourth section of the Act to regulate commerce. The application of the short haul rule has been made upon so many lines, and to such an extent of territory, that inferences can now properly be drawn in respect to the effect of the rule upon localities, traffic and revenue. The only way in which this subject can be intelligently studied, is by a careful examination of the methods of each road.

The first line south of the Potomac largely engaged in long distance competitive business at low rates, is the Chesapeake and Ohio. This company was not a party to the order of notice above mentioned, but its tariffs are on file. It is engaged in traffic between the Western States and the Atlantic sea-board, in competition with what are known as the Trunk Lines, and in view of the longer route traversed, it makes a differential rate in such competition, lower than the current trunk line rates on business between Chicago and New York, the differential being 3 cents on the first four classes, and 2 cents upon the 5th and 6th classes. The Baltimore rates *via* Newport News, are the same as the Baltimore rates by other lines all rail; and the same rates are made over the Chesapeake and Ohio to Newport News, Norfolk, Richmond, Petersburg, Lynchburg and other Virginia points, the rate from Chicago being 72 cents 1st class and 22 cents 6th class.

The through traffic of the Chesapeake & Ohio is handled by the Kanawha Despatch Fast Freight line, an organization made up of the several companies over which it operates. The Chesapeake & Ohio proper, extends from Huntington, West Virginia, easterly through Charlottesville to Richmond and Newport News; this company also controls the operations of the Richmond & Allegheny, branching from its main line at Clifton Forge, and running thence through Lynchburg to Richmond.

The Kanawha Despatch fast freight line works over the Cincinnati, Indianapolis, St. Louis & Chicago from St. Louis and Chicago; also over various lines from Toledo and its vicinity; also from Memphis, Nashville, and other southwestern points. In all this business between the Atlantic sea-board and the western and south-western States, handled in competition with the Trunk Lines (of which, in fact, the Chesapeake & Ohio may be called one) the principle of obedience to the requirements of the fourth section of the Act to regulate commerce is preserved; in other words, in making rates over this line between the western and southwestern States and local points in Virginia, situated upon the Chesapeake & Ohio and Richmond & Allegheny roads, the tariffs do not show that rates are higher to intermediate points than to more distant points over the same line. The Official Classification is used. All local points in Virginia, for example, between Charlottesville and Richmond, and between Richmond and Newport News, are grouped under the same tariff in respect to through business east-bound and west-bound; and the Chesapeake & Ohio road asserts that it is not a party to rates on interstate business, to or from their intermediate points which are in excess of through rates, over the same tracks to or from points beyond. In this respect, the competition of this line with the other trunk lines is conducted upon the general principle adopted by the Grand Trunk & Central Vermont or National Despatch Line, in the same competition since the decision of the Commission in the case of the Boston & Albany Railroad Company against the Boston & Lowell Railroad Company and others, (1 I. C. C. R., 158.)

Proceeding south, the next important line is the Norfolk & Western. This road extends from Bristol, on the boundary line between Virginia and Tennessee, easterly through Lynchburg and Petersburg to Norfolk. Its connection at Bristol is the East Tennessee, Virginia & Georgia, over which it reaches all parts of the southwest. It also handles freight to and from the western states *via* Bristol, and thence through Knoxville and Jellico or Knoxville and Chattanooga.

The interstate traffic of the Norfolk & Western is considerable in both directions. In many respects it is conducted in conformity to the principle of the short-haul clause of the Act.

This is true in respect to traffic between stations on the line of the Norfolk & Western road and the Atlantic cities in connection with steamboat lines *via* Norfolk. The tariffs on file give rates subject to the Norfolk & Western Local Classification, (which is the Official Classification, so called), from Baltimore, Philadelphia, New York, Providence and Boston to all stations on its line, and from those stations to said cities. These rates to and from points east of Petersburg are no higher than to and from Petersburg; to and from points east of Lynchburg are no higher than to and from Lynchburgh; and the same is true of intermediate points east of Roanoke and of Bristol, respectively. In making this adjustment the stations are quite widely grouped; for example, the first-class rate between New York City and Shawsville is \$1.05, and the same rate applies to and from all stations between Shawsville and Bristol, a distance of 127 miles. A very large proportion of the interstate traffic of this road is handled under these tariffs in connection with water lines from Norfolk to the cities named.

A Fast Freight Line known as "The Great Southern Despatch," works over this road from New York and Pennsylvania points *via* Harrisburg, Hagerstown and the Shenandoah Valley, striking the Norfolk & Western road at Roanoke and leaving it at Bristol. Rates over this line to local stations on the Norfolk & Western road are made in conformity with the fourth section of the Act to regulate commerce, being no greater to local points easterly from Roanoke

than to Lynchburg, and to local points westerly from Roanoke than to Bristol. Other tariffs of the Great Southern Despatch Line will be considered in connection with the road upon which the various points reached are located.

Rates from western cities to points on the Norfolk & Western road are treated in a different manner. Tariffs to Norfolk, Petersburg and Lynchburg are issued from time to time by initial railways, and by the Virginia, Tennessee & Georgia Air Line, so-called, from various Western and Southwestern points; these tariffs also include rates *via* Norfolk to Baltimore, Philadelphia, New York, Providence and Boston. The first-class rate from Chicago to Lynchburg, Petersburg, and Norfolk is 72 cents; and the same rate is made *via* this line to Baltimore, Philadelphia and New York. Rates to local points on the Norfolk & Western are constructed by adding to the Norfolk, Petersburg and Lynchburg tariffs, under the Official Classification, certain arbitraries specified in a sheet furnished to the initial railways for that purpose. These arbitraries are not the local charges on the Norfolk & Western road from the basing points to intermediate stations, but are considerably less. On the main line they run from 15 cents on the first-class to 6 cents on grain; the local freight tariff is a distance tariff, the rate to Farmville, for example, being, first-class, 30 cents from Lynchburg and 32 cents from Petersburg, while the arbitrary addition, as above, is 15 cents only. The division of these rates is also peculiar, in this: that while the usual custom in respect to roads charging local rates from junction points provides for a *pro rata* division of the through rate to the junction point and allows the terminal road the entire local rate, the Norfolk & Western divides the entire rate on Norfolk, Petersburg & Lynchburg percentages, receiving an arbitrary only on stations situated on its branches, and in that case only the amount attributable to the service on the branch line. Under this system the amount charged local points on the main line is divided proportionately among all the roads between the points of origin and of delivery of the freight, so that the additional sum received by the Norfolk & Western upon the greater charge made for the shorter haul is comparatively very small.

An explanation of the grounds on which this company justifies the charging of a higher rate to intermediate points, than the rates charged to Lynchburg, Petersburg and Norfolk, is stated by its representative as follows :

“We are compelled, as we believe, by the controlling force of circumstances (desiring to participate in the business and to obtain for ourselves a share thereof) to accept the rates as made by other lines to the important competing points on our road.”

“Looking at it from our revenue standpoint, if we made the rates to Norfolk from western territory as high as we did to intermediate stations between Norfolk and Petersburg, it would put our rates higher than our competitors, and therefore we could not do the Norfolk business.”

The meaning of this statement undoubtedly is, that the line desires to participate in traffic from the West to the important points of Norfolk, Petersburg, Richmond and Lynchburg, which are reached from the same territory by the Chesapeake & Ohio, Baltimore & Ohio, and other routes having shorter lines than the line of the Norfolk & Western *via* Chattanooga or Knoxville. This can not be done unless the rates made are the same or lower than those of the more direct lines. Rates are accordingly made upon this competitive traffic which the company is unwilling to accept upon traffic to its local stations. It is claimed that this system contains an element of compensation to the intermediate points which is stated as follows :

“A consignee at a local station understands that he is not unduly discriminated against in favor of the competing points on the line, because the rates made to his station on this traffic are always less under the basis employed in the traffic referred to than they would be if the business came by a competing line to the competing point on our road and then local rates to the stations were added thereto.”

Nevertheless under the system above detailed the division of the through rate to local stations which the Norfolk &

Western itself receives does not yield to this company a revenue very largely in excess of the revenue which it receives upon business taken to the competitive points.

The infraction of the short-haul rule in this instance appears to be simply for the purpose of meeting railroad competition and enabling this route to participate on favorable terms by a roundabout line in business to and from certain competitive points. It is stated that the western connections are allowed to participate in the division of the increased rate at intermediate points, as an inducement to them to co-operate more freely in routing competitive business.

This situation presents a case which has not as yet been passed upon by the Commission, except so far as the same is discussed in Boston & Albany Railroad Co. against Boston & Lowell Railroad Co. and others (1. I. C. C. R. 158), in which case it was said that the necessity there alleged is one "which exists wherever long and short lines compete; the long line must accept the rates made by the short line and perhaps make concessions from them. In this respect there is nothing peculiar in the position of these defendants; there are roads in every part of the country which can make the same claim they do with the same justice. It is a claim that could be advanced wherever a route, however circuitous, could be formed for long-haul traffic * * * The greater the departure from the direct line, the greater would commonly be the necessity for low rates on through traffic, and the greater the liability to have the charges on the local traffic increased to make the carriage of through traffic possible."

The case now in question does not appear to develop any substantial ground upon which the departure from the rule of the statute can be justified.

Rates in the reverse direction from local points to distant western and south-western points are generally made observing the short-haul principle of the law, so far as the point of shipment is concerned; that is, no more is charged from intermediate points upon the Norfolk & Western road than

from other points more distant over the same line. In making shipments to the south and south-west where the Southern Railway and Steamship Classification is employed, that Classification is necessarily used, and the shipments are billed according to its provisions. It appears that many roads in the Southern States upon which freight of this character may be delivered, have established exceptions to the standard classification of the Southern Railway and Steamship Association; in such cases bills of lading issued by initial roads are framed so that, in case the classification of the delivering road so requires, a change in the bill of lading may be made, as well as in the freight charges. Freight destined to points in the southern and western territory last referred to, of course is subject to the exceptions to the short-haul rule which prevail at the various points of delivery; and each road furnishes others with the rates to its several stations.

So far, however, as the stations upon the Norfolk & Western Railroad are concerned, interstate traffic to and from them is carried substantially in accordance with the rule of the fourth section of the Act to regulate commerce, excepting freight from the west and south-west to its local points.

The earnings of this road, both gross and net, have been very considerably increased during the period since the Act to regulate commerce took effect.

The Richmond & Danville Railroad may next be considered. The main line of this company extends from Richmond through Danville to Atlanta, running along the foot of the mountains across the States of North and South Carolina into Georgia; from which circumstance the route is known as "The Piedmont Air Line." It reaches tide-water at West Point on the York River 38 miles east from Richmond, where steamboat communication is made with Baltimore and other eastern cities. From Danville a branch extends northerly *via* Lynchburg to Washington, called the Virginia Midland Division. The Richmond & Danville has several spurs or branches, the more important being a line from Charlotte, North Carolina, running southerly through Colum-

bia, South Carolina, to Augusta, Georgia; another from Salisbury, North Carolina, westerly to Paint Rock on the Tennessee boundary, where connection is made with a branch of the East Tennessee, Virginia & Georgia, and an extension westerly from Atlanta, called the Georgia Pacific, running through Birmingham, Alabama, and projected to the Mississippi river.

The greater part of the south-bound interstate traffic of this company is between New York and other eastern cities and points, on and beyond its line in the southern and southwestern States. The tariff upon this traffic is contained in the monthly publication, entitled "How to Ship," above referred to, which gives rates between Boston, Providence, New York, Philadelphia and Baltimore, and all said Southern points, in both directions the same. The Richmond & Danville routes named are the Paint Rock Line and the Piedmont Air Line; the former reaching the territory in question *via* Knoxville and Chattanooga, and the latter *via* Charlotte and Atlanta. The classification employed is that of the Southern Railway and Steamship Association with an "Exception Sheet B," which is printed in the pamphlet, together with the classification. This "Exception Sheet" affects from 100 to 125 articles, many of them leading commodities in the traffic. When shipments are wholly within the States of Georgia and South Carolina respectively, the classification established by the State Commissions of those States is employed. On traffic from a Georgia point to the East the Georgia classification would be used to Atlanta, and that of the Southern Railway and Steamship Association for the rest of the route; the rate upon the same article is, therefore, at times, subject to be computed under two different classifications for parts of a single journey.

The method employed by the Richmond & Danville in respect to interstate business to and from its local points, taking the New York city first-class rate as an illustration, is as follows:—

On the main line the rate New York to Richmond is 35 cents; going south the tariff gradually increases, as follows:

Burkeville, 60 cents; Danville, 88; Reidsville, 99; Greens-

boro', \$1.05, 189 miles from Richmond. From this point through Salisbury to Charlotte, 93 miles, the same rate is preserved. Beyond Charlotte the rate again increases to Spartanburg, 257 miles from Richmond, where the rate is \$1.24. This rate is maintained for a distance of 99 miles, through Greenville and Seneca to Toccoa; the rate is reduced to \$1.14 at Gainesville, and remains the same for a distance of 53 miles to Atlanta, 549 miles from Richmond. The Atlanta rate is the same by all routes, and the principles said to control its establishment have been above stated. The stations between Gainesville and Atlanta are grouped under the Atlanta rate of \$1.14, upon what is considered a concession to that locality, the traffic being light and the loss of revenue inconsiderable.

From the above it appears that the rate from New York to Atlanta by this route is a gradually increasing rate, with the exception of a distance of about 100 miles, where a grouped rate of \$1.24 is maintained as against the Atlanta rate of \$1.14. The rates on the other classes vary proportionately less, the difference between Spartanburg and Atlanta being 5 cents on classes 4 and 5, 3 cents on class 6, and the rates being the same on class D. In reaching their present adjustment, the rates from Spartanburg to Toccoa, including those points, were reduced; the rate, New York to Spartanburg, now \$1.24, being formerly \$1.35.

Upon the Western North Carolina Division, leaving the main line at Salisbury, where the rate is \$1.05, a rate of \$1.08 is reached at Catawba, distant 39 miles from Salisbury and 278 miles from Richmond, which rate is preserved through Asheville to Paint Rock, and beyond, on the line of the East Tennessee, Virginia & Georgia, to Knoxville, without higher charge at any intermediate point.

On the Charlotte, Columbia and Augusta Division the rate, at the time of the hearing, was \$1.24 uniformly, except at Columbia and Augusta, where it was 96 cents, and at Rock Hill, \$1.14. No reason is stated why two minor points between Charlotte and Rock Hill were given a higher rate than the latter place. The low rates between Columbia and Augusta were claimed to be justified by water

competition. Since the hearing the rates from New York to the intermediate points on this Division have been quite materially reduced; Columbia and Augusta being the only exceptions to the short-haul rule, and the disparity in relation to those points being diminished. Upon the branch roads running from Columbia to Greenville, from Spartanburg south to Union and Alston, also at Laurens, Anderson, Abbeville and other points in western South Carolina, the Spartanburg rate of \$1.24, first class, is preserved. The rates on the Cheraw and Chester have been reduced from \$1.24 and are now grouped at \$1.05. The rates on the Chester and Lenoir have also been reduced and aligned.

Other junction points at southern terminals of this system are Athens and Goldsboro, the rate to Athens being \$1.14, or 10 cents lower than certain intermediate points; and to Goldsboro \$1.05, all the stations on the branch from Greensborough to Goldsboro being grouped at this rate. On the minor branches of the Richmond & Danville additions to the rates from the branching points are made, which however are not heavy. Diagrams have been produced by this company showing the rates as they existed prior to the Act to regulate commerce and as they now exist, a comparison of which shows material reductions at many intermediate points and a general bringing of the tariffs into conformity with the fourth section of the Act, with only the exceptions above stated. Through rates from the West to points on the above lines are made by adding stated rates from junction points, which are lower for the long haul only in the cases of Columbia, Athens and Gainesville.

North-bound rates on business originating at points on this line are not higher to intermediate points than to Richmond, Lynchburg and Washington. In some cases, but not generally, such business originating at remote points has higher rates to intermediate stations than to the terminals; an example of this is found in the case of molasses and some other commodities, shipped from New Orleans to Richmond

over this line at 40 cents for the purpose of dividing the traffic with water routes, whose tariff is 37 cents, the rate meanwhile to local stations from Charlotte to Danville remaining at 50 cents. This is claimed to be justified on the ground of actual existing water competition; the forty cent rate is not accepted to Lynchburg where no water competition is found, although other rail lines make that rate from New Orleans.

It is seen therefore that the chief variations from the short-haul clause made upon that part of the Richmond and Danville system east of Atlanta are found in the territory from Spartanburg to Toccoa, where the first-class rate is 10 cents higher than the Atlanta rate, at points between Charlotte and Columbia, and between Columbia and Augusta. In all this territory the grouping of rates is widely extended, and nothing exists in the nature of adding local rates from junction points, either forward or in the reverse direction, as found upon some other lines. The rates in question are largely affected by rates made from the seaboard to Augusta, Macon and Atlanta under the authorization of the Georgia State Railroad Commission; no recommendation respecting them is now made, other than the general suggestions below.

Proceeding upon the extension of the Richmond and Danville line west from Atlanta, known as the Georgia Pacific, it appeared from the testimony that the first-class rate increased from Atlanta, \$1.14, to Bremen and Waco, \$1.52, then decreased to \$1.14 at Anniston and Oxanna; it increased to \$1.51 at Seddon and returned to \$1.14 at Birmingham; it increased again to \$1.54 at various stations from Day's Gap to Hudson, and decreased to \$1.20 at Columbus, Mississippi. The Anniston, Birmingham and Columbus rates are made lower in conformity to the established rates of other lines at those points. The February, 1889, edition of "How to Ship," however, shows important reductions from the above figures at all intermediate points; the highest rate between Atlanta and Anniston is now \$1.31; between Anniston and Birmingham, \$1.31; between Birmingham and Columbus, \$1.37.

Traffic passing over the Richmond & Danville road to the lines of its various connections is charged to destination upon the principles adopted by the several connecting lines where the freight is delivered.

The publication "How to Ship" also contains the tariffs of two groups of railroads known as the Atlantic Coast Line and the Seaboard Air Line, operating in the vicinity of the coast in Eastern Virginia and North and South Carolina. The situation of these lines is quite peculiar, as rates to and from the Eastern cities by ocean are largely available at coast points; Wilmington for example, having by long usage received the same rates as Charleston; Fayetteville in the interior being reached by water lines on the Cape Fear River, and Wadesboro by the line of the Carolina Central from Wilmington; Tarborough and other points may be mentioned as affected by ocean rates. No minute scrutiny has been made of the rates upon these lines; it is stated that many changes have been made since the passage of the Act in order to bring the rates within the principles of the law. The violations of the fourth section are not many. Nor does the disparity between the points affected by ocean rates and interior points appear to be extreme, so far as the rates have been examined by the Commission.

Another very important system is that of the East Tennessee, Virginia & Georgia Railroad Company. Its principal lines are the following:

One commencing at Bristol on the boundary line between Virginia and Tennessee and running southwesterly through Knoxville, Chattanooga and Decatur to Memphis; another from Chattanooga through Rome, Atlanta and Macon to Brunswick on the Atlantic Ocean; another branching westerly from Rome through Calera and Selma to Meridian, Mississippi. The main line from Bristol reaches Rome by a branch from Cleveland, Tennessee, 29 miles northeast of Chattanooga; there is also a branch from Knoxville northwest to a connection with the Louisville & Nashville at Jellico and several other minor branches, making a total of

nearly 1500 miles of road, situated in four States and reaching many important points between the Atlantic Ocean and the Mississippi River. It connects at Bristol with the line of the Norfolk & Western from the eastern cities.

The interstate commerce of this system includes traffic which originates at points located on the line of its road and destined to points in other States also on its own line, and joint traffic handled in connection with other lines. The principal originating points of its local traffic are Knoxville, Chattanooga, Memphis, Atlanta, Brunswick, Selma and Meridian. Probably, however, the more considerable part of the interstate business of this line is traffic to and from Virginia and the Eastern States *via* Bristol; Paint Rock and Brunswick; traffic to and from the Western States *via* Jellico, Chattanooga and Memphis; and traffic with Mississippi and Louisiana *via* Meridian. Much of this business is very long distance traffic; for example, from New Orleans and Memphis to New York City, or from Chicago and St. Louis to Atlanta, Macon and Brunswick.

It is traffic of the latter class which presents the greatest apparent difficulties to the traffic manager who endeavors to comply with the fourth section of the Act to regulate commerce in the working of rates through a country where business is light and distances between stations long. There is, for example, proof of the existence of considerable freight traffic from Chicago, St. Louis and other points in the Western States to Charleston, Savannah, Brunswick and other points on and near the Atlantic seaboard, consisting of packing-house products, flour, grain, etc. Taking as an illustration Class D (grain), the rate as established September 30, 1888, by the Southern Railway and Steamship Association over these and other lines from St. Louis to the Atlantic coast points referred to was 25 cents; to Macon and Augusta, Georgia, the rate was 34 cents, and to Atlanta, Georgia, 32 cents, Macon being 195 miles inland from Savannah. The low rate to the coast points was claimed to be compelled by reason of competitive rates established on rail routes from St. Louis and Chicago to Baltimore and Philadelphia and

thence by ocean vessels to the coast points in South Carolina and Georgia.

The various carriers engaged in the all-rail traffic to those points have recently revised these rates, and on February 1, 1889, the rate from St. Louis to the coast points was made 31 cents on Class D, the rate to Macon and Atlanta remaining unchanged. A trial of this revised tariff is now being made and the practical results will soon enable the carriers engaged therein to determine whether they can not properly make the Macon rate a continuous rate to the coast. Macon and Atlanta, however, have at all times been treated as competitive points and have received rates of the lowest grade.

The intermediate points which seemed to the Commission to have been particularly in view in the framing of the Act, are the smaller places scattered along the lines of the Southern roads; for example, between Brunswick and Macon and between Macon and Atlanta. Owing to the treatment which points of this kind received from the carriers there has been little opportunity for the exhibition of local enterprise or for the development of local industries. It has been customary to issue tariffs from distant commercial centers to the larger southern points and railway junctions as basing points, from which rates to all surrounding intermediate territory were made by the addition of local charges, usually framed on a progressive mileage basis and increasing rapidly, the hauls being treated as short and independent from the several basing points, and the combination of the through and local rate being regulated only by giving to such points the "benefit," as it is somewhat ironically termed, "of the lowest combination;" by which is meant the adoption of such combination as would produce the lowest rate, whether the basing point was on one side or the other of the destination; in other words, the shipper at these local stations had the legal right to have his goods forwarded to a point beyond his depot and returned at local rates, if less than the combination made from a basing point in the other direction by adding the local rate therefrom to the through rate thereto.

The belief has forced itself upon this Commission with increasing strength during the period in which it has observed

the operation of various systems of rate-making in the Southern States and elsewhere, that this system of combined joint and local rates to points in the Southern States intermediate to the so-called basing points is in a very great degree responsible for the lack of local development in that region, except at favored localities. That there are difficulties in the situation is readily conceded ; that there are present and temporary advantages to the carrier in the establishment of thriving cities and jobbing centres distant from each other one hundred miles or more, with stretches of intermediate territory where all distribution and collection of articles of consumption and products of the soil are made at local tariff rates, may also be conceded ; nevertheless it is the belief of the Commission that it was the situation of these local communities and others similarly situated in other parts of the country, mostly agricultural, without important manufactures, mills or other business enterprises, and paying rates for transportation largely in excess of the customary tariffs to competitive centres, that attracted the attention of Congress and led to the incorporation of the short-haul clause, so-called, as a leading feature of the Act to regulate commerce. Having given a most attentive consideration to this subject it is the further belief of the Commission that the complaint of these minor communities was a just complaint ; the expression of the short-haul principle has been clearly made in the Act to regulate commerce ; and it would be the duty of any tribunal competent to aid in the enforcement of a statute of this nature, to insist upon its execution, subject only to such just exceptions as the language of the Act may reasonably sustain.

When, therefore, competitive carriers are enabled by harmonious action to so adjust their rate sheets as to bring their charges into conformity with the general rule of the fourth section, and still realize reasonable and fair return for the service performed for the public, it becomes the duty of the Commission to see that intermediate points receive the benefits of such an adjustment.

By "intermediate points" the Commission does not refer to points like Macon and Atlanta so much as to the minor

points along the lines of the various carriers. If the former principle of adding local rates from basing points is pursued, the effect of any advance of rates to terminals will be to advance them at all the local stations by the same amount. This is directly contrary to the intention of the law; it is the duty of the Commission to see to it that such advances, when proper in themselves, are made the occasion for reduction rather than advances at minor intermediate points.

The chief obstacle in the way of a general compliance with the rule of the fourth section is found in the question of revenue. Carriers in the Southern States employ that argument in every case when conformity to the law is suggested. They say that the railroads must live or there can be no commerce by rail; and they insist that any reduction of rates means loss of revenue, which is against the public interest and the carrier's right, unless the rate in question be unreasonable *per se*. But it is not clear that the application of the general rule of the law would involve permanent loss of revenue. The stimulus given to business at intermediate points will increase traffic largely; that proposition has been so often practically demonstrated that no intelligent observer can reject it. Moreover the adjustment required does not necessarily involve immediate loss of revenue. An advance of a single cent, for example, on the various classes and specials composing the large interstate traffic to and from Atlanta would compensate the carriers for very considerable reductions on the comparatively light interstate traffic which is now carried to local points on the Atlanta combination.

The construction of the tariffs of the East Tennessee, Virginia & Georgia Railway during the period that has elapsed since the passage of the Act, has been in some respects intelligent, and an effort has been observed to bring them in some degree into conformity with the spirit of the law. The treatment accorded to different parts of its system has not, however, been uniform, and much room still remains for progress. It is the belief of the Commission that an intelligent study of the tariffs of the system as a whole, from the standpoint of observing desirable changes rather than of seeking for the perpetuation of old methods, would result in the elimination

of much injustice which still remains, without materially affecting the earning capacity of the property. The method by which this may be accomplished is indicated above.

At present the amount shipped to intermediate points is relatively very small; giving such points the rates charged at more distant places, if adopted and maintained as a general principle, would necessarily encourage local industry and enterprise. Such encouragement would not be at the expense of the coast points, but would in its reflex action and by necessary laws ultimately work in their favor also. It is customary for dealers at Baltimore, Philadelphia, New York and Boston to supply interior towns in their vicinity by sales to customers there located, deliveries being made by the stoppage of cars *en route* for the terminals, at the same rates charged in case they are carried through. The adoption of such a system in the Southern States would not break up the business of distributing points; the methods would be somewhat changed, but the combinations of credit and acquaintance would maintain existing business relations. The operation of this system in the Eastern, Northern, and Western States, by way of developing local communities, has wrought benefits to the country at large which are obvious to the most superficial observer. An example of the results which might follow the abandonment of the old system of constructing tariffs is given in the following extracts from a communication which was addressed to the Traffic Manager of the East Tennessee, Virginia & Georgia Railroad, from a party residing twenty-three miles north of Macon on the line of that road.

“We own at Juliette, Ga., a water-mill with a capacity at present of grinding about one car-load of corn per day, besides some wheat, stock-feed, etc. The mill site is 100 yards from your line of road, on the Ocmulgee River, which, during lowest water, furnishes about five thousand horsepower, easily available, enough to run an enormous mill, or several of them. Now, we have undertaken to improve this property, commensurate with its earnings, and propose to put a good deal of money in it if it pays, and there is no

telling what proportions it might reach if we can enlist the aid we ask of you, which seems very reasonable to us. Our principal work will be that of grinding corn into meal by water power.

“Our request is for a through rate to Juliette, Ga. (23 miles shorter haul than Macon) and at the Macon rate. We want this rate from the principal grain markets, viz: St. Louis, Cincinnati, Chicago, etc. Our purpose is to erect at this place an Elevator and Warehouse, and have Macon merchants ship us corn and then re-ship it to their orders over your road when it is made into meal, thereby giving you a local rate on all our product, besides the through rate you get for bringing it there.

We would very much like ‘Milling in transit,’ but not hoping in that, we ask for this rate, which we believe you can and will give us, as it contributes, coming and going, to your earnings.”

This application was supported by wholesale merchants of Macon, and was obviously not in conflict with the interests of that city, but afforded an opportunity for Macon capitalists to purchase Western grain to be milled at Juliette and thence distributed at local rates. The reply of the Company was as follows:

“Your communication, asking for the Macon rate on grain from western points to Juliette, has had our very careful consideration; but for reasons hereinafter stated we do not see our way clear to grant what you ask. In the first place, the Interstate Commerce Commission would not approve of our making the Macon rate to Juliette, and charging higher rates to other local stations north of Juliette, and it would be too much of a sacrifice for the road to make to level the rates to all local stations; and, in the second place, we could not give Juliette the Macon rate without pursuing the same policy toward the many mills located on our system of railroad, which we are not prepared to do at this time. I will state that the question as to the validity of the practice of what is known as ‘milling in transit’ is now before the Interstate Commerce Commission, and pending the decision of that

body we do not feel safe in allowing you that privilege. We agree with you that the arrangement you propose would be a good thing for this Company—if it could be confined to Juliette—but as this is an impossibility, it would mean a large loss of revenue to this Company to consummate the arrangement. In conclusion, we have to regret that the general good of this Company forces us to make an unfavorable answer to your proposition.”

This answer, in substance, announced the policy of the Company to be the preservation of its general principle of charging more to intermediate points than to Macon and other so-called competitive points on its line, although at the expense of preventing the establishment of new industries, and of affording practicable rates to “the many mills” situated along its line of road. The writer is correct in stating that the Interstate Commerce Commission would not approve of charging higher rates to local stations north of Juliette than to Juliette; nor has it ever approved of charging higher rates to Juliette than to Macon. The Commission is by no means convinced that the general re-construction of tariffs referred to in the letter would mean a “large loss of revenue” to the Company, if intelligently arranged, and upon the line of the suggestions made in this opinion. Such loss of revenue as might apparently immediately ensue would, in its judgment, presently and at no distant day be much more than compensated for by the increased traffic resulting from the establishment of manufactories, mills and other industrial enterprises, at points where the railroad rates now prohibit them.

That part of the East Tennessee, Virginia and Georgia system lying between Bristol and Chattanooga, has been the subject of changes in interstate rates. Two principal routes are available to commerce between this region and the eastern cities; one *via* Bristol, and the other *via* Paint Rock. The Great Southern Despatch Line reaches this territory through the Shenandoah Valley *via* Harrisburg, Hagerstown, Roanoke and Bristol. It publishes tariffs from points

in Pennsylvania, New York and New England, governed by the Southern Railway and Steamship Association Classification. The rate (first class) to Knoxville, Chattanooga and Dalton is \$1.14; and the same rates are made to all intermediate points along the line, and also to points on the branch from Knoxville to Jellico.

This principle is also followed in arranging rates in the same territory *via* Paint Rock.

The same rate, \$1.14, is in force from New York to competitive points south of Dalton, including Rome, Atlanta, Anniston, Birmingham, Selma, Montgomery, Columbus, Opelika, Macon and Brunswick. The rate to New Orleans, Natchez and Vicksburg is 70 cents; to Mobile 75; Baton Rouge 87; Memphis \$1.00. The through rates to these Mississippi River points are seen to be low; nevertheless, there is actual water competition by ocean steamers between the eastern cities and New Orleans, and by boats upon the Ohio and Mississippi Rivers. While it is not at all improbable that this subject requires adjustment and re-arrangement, it is not proposed to enter upon its consideration at the present time. The question of competitive markets is often more embarrassing than that of competitive carriers.

Returning to the tariff of the Great Southern Despatch from Eastern cities, it is observed that the rates named to local points beyond Dalton are in most instances greater than the above schedule fixed for competitive points. The intermediate stations between Rome and Atlanta and between Atlanta and Macon are grouped at first-class, \$1.33. Upon other routes of this company the rates to local stations are somewhat higher, but as given in the tariff of the Great Southern Dispatch there is an effort apparent, by grouping and otherwise, to prevent the existence of very great disparity.

The portion of this line between Macon and Atlanta presents a question which arises in various forms in the Southern States and which gives rise to a serious difficulty in the adjustment of rates. The Central Railroad of Georgia has a line from Savannah through Macon to Atlanta, which, by its ocean connection, practically controls the tariff from the

Eastern States to both points; while the East Tennessee, Virginia & Georgia enters the State of Georgia from the opposite direction, and competes both at Atlanta and at Macon for business to and from the same eastern cities. If the rate by the latter line to Atlanta were lower than the rate to Macon, or if the rate by the former line to Macon were lower than the rate to Atlanta, the result might be a "war" of rates between these two competing lines, which would either compel the Central Railroad of Georgia to withdraw from competition for business to Atlanta, or the East Tennessee Virginia & Georgia to withdraw from competition for business to Macon. The adjustment of rates to both these points at a reasonable figure is an advantage to shippers at both places by enabling two available routes to be maintained.

The figures, however, which have been agreed upon are claimed to be so low that they would not afford reasonable rates on either line for local deliveries at intermediate points where no competition exists. This claim can hardly be accepted without challenge. Statistics concerning the amount of business over these lines, to the cities of Atlanta and Macon, respectively, as compared with the amount of their business to and from intermediate points, have not been furnished. Those cities are distant from each other about 100 miles, and several villages are found upon each line. Of these, McDonough, on the East Tennessee Virginia & Georgia, now receives the \$1.14 rate as a junction point, the rate at other intermediate points on that line being \$1.33, as above stated. Its competitor, the Central of Georgia, operating a parallel road on which the movement from eastern cities is in the opposite direction, has recently reduced its rates in such manner that the stations from Macon to Griffin are grouped at \$1.14; beyond Griffin a rate of \$1.31 is reached at Jonesborough, falling to \$1.14, as above stated, at Atlanta. It is fair to say that neither of these roads, at present, adopts the principle of adding local charges to the rates at basing points, but both have modified their tariffs in the direction of conformity to the rule of the law. The requirement of the general rule of the statute, however,

is not satisfied so long as any disparity exists, and the question of a general re-adjustment of the rates does not seem as yet to have seriously engaged the attention of the carriers.

The section between Macon and Atlanta has been dwelt upon simply as illustrative of conditions quite largely prevalent in the Southern States. Water competition as a direct factor is not found at either of these points. The rates at Macon, however, are said to be affected by the ocean rates to Savannah and Brunswick, from which points a rail carriage of about two hundred miles reaches the city of Macon. The rate from the ocean to Macon on business from New York is not, however, based upon the principle of relation to increased distance; on the contrary, the Central of Georgia in its rates from New York reaches \$1.31 at Gordon, only to fall again to \$1.14 at Macon. It is obvious, therefore, that the Macon and Atlanta rates are founded upon arbitrary considerations, resulting from past usage and from local demands, and not altogether upon compliance with the competitive pressure of ocean lines. The general re-construction of the tariffs suggested would require concurrent action on the part of the various carriers which penetrate the section of country under consideration, from different directions, interlacing each other at many points. So far as the Commission is able to perceive, however, this is not an impracticable arrangement; on the contrary, in view of the improvement in construction of tariffs since the passage of the law that has been effected on many lines in a similar way, it is believed to be entirely feasible. It is therefore recommended that action be at once inaugurated in the direction above indicated; in case obstacles are found, either arising from natural causes, or from the position taken by lines interested in the traffic, which tend to make difficult the proposed re-adjustment, the facts with the questions involved may be brought at any time to the attention of the Commission, when they will be considered and such further recommendations made as the situation appears to demand.

One of the difficulties met by the southern roads in applying the rule of the fourth section to their traffic is exemplified

by the situation of the Western & Atlantic road, which runs from Atlanta, Georgia, to Chattanooga, Tennessee, 140 miles. Freight from or to the Eastern cities may reach or leave this road at either end of its line, the rate to Atlanta *via* the Richmond & Danville being 1.14, and the rate to Chattanooga *via* the East Tennessee, Virginia & Georgia being also 1.14. The latter road moreover announces a rate of 1.14 to Atlanta, while the former makes a rate 1.14 to Chattanooga. Shipments to intermediate points on the line of the Western & Atlantic usually are received *via* Atlanta rather than *via* Chattanooga, but when deliverable at local stations the rates are met somewhere on the line by rates obtainable by the addition of local rates from Chattanooga. Moreover the competing line of the East Tennessee, Virginia & Georgia from Chattanooga to Atlanta crosses the Western & Atlantic at Dalton, and the latter point also receives the 1.14 rate. Rates in the pamphlet "How to Ship" to points on the Western & Atlantic are made by the addition of locals to the Atlanta rate until a place called Rogers is reached, where the rate is 1.44; thence the rates decrease to Dalton; thence they increase again to Chickamauga, 1.34, and fall to 1.14 at Chattanooga. And the rates of the Great Southern Despatch *via* Chattanooga are identically the same to all such local points.

In case the same rates from eastern cities were made to Chattanooga, Dalton, Atlanta, and also to all local stations on the Western & Atlantic, the question of division of rates might be an embarrassing one. A *pro rata* division on a mileage basis would afford the delivering road but very little revenue; yet the long lines to Atlanta and Chattanooga might object to accepting less on freight to local points on the Western & Atlantic than they get on freights to those cities, especially when those rates are adjusted on a so-called competitive basis. Such an adjustment of this matter as would be required in order to make the tariffs conform strictly to the law, might be difficult, and would involve mutual concessions. Upon its local tariffs the Western & Atlantic substantially conforms to the rule of the statute, although Dalton receives lower rates from Atlanta than some intermediate

points, by reason of the general arrangement existing on the Southern roads in favor of junctions, which it is difficult to justify.

The Marietta & North Georgia is a road running northeasterly from Marietta. Rates from the eastern cities are made by adding its locals to the rate to Marietta. These rates are progressive as far as Murphy, North Carolina, 112 miles from Marietta. The road is under construction beyond Murphy, and when it reaches Knoxville, Tennessee, similar conditions will be presented to those above described on the Western & Atlantic, as traffic can then be handled in both directions.

Another example of a similar difficulty is the following:

In the pamphlet "How to Ship," and in the Great Southern Despatch tariff, rates are shown from the Eastern cities to points on the line of the Cincinnati Southern; the first *via* Paint Rock to Chattanooga; the other *via* Bristol to Chattanooga; and thence northerly to local points on the Cincinnati Southern in Tennessee and Kentucky. The rate to Chattanooga, as above stated, is 1.14. The rate to Melville, 17 miles north of Chattanooga, is 1.29; from thence the rate grows gradually less and less to Moreland, Kentucky, 211 miles north from Chattanooga, where it is 1.00. This apparent anomaly is explained by the fact that the Cincinnati Southern is part of the Queen & Crescent system, which runs from Cincinnati through Chattanooga to New Orleans. The rates upon this system are progressive from Cincinnati south as far as Chattanooga. The system forms a quite direct line from the eastern cities *via* Cincinnati to its local points. Traffic from New York to the stations between Melville and Moreland might naturally come upon this line at Cincinnati and be taken thence southerly. Such traffic is not refused when it comes on to the line at Chattanooga to be taken thence northerly; but the rates in the latter case instead of increasing with distance diminish with distance, because they are made the same as rates from New York to the same points coming in the normal direction of the movement, that is, by way of Cincinnati.

This situation develops a fact which has been somewhat overlooked by the public in dealing with the general subject. It is a feature of the method of making rates and interchange of traffic pursued in the Southern States—that all routes are equally open to the shipper, and on the same terms. For example, of the rate New York to Melville, 1.29, the Cincinnati Southern would receive pay for only 17 miles haul from Chattanooga; while if the freight approached Melville from the north it would receive pay for 318 miles haul. In such cases it is obviously very greatly for the interest of the carrier to arrange its tariffs in such a manner that the longest haul and the greatest division possible shall accrue to its own line. The contrary policy is, however, quite generally in force, and equal rates from initial points are given without regard to the direction in which the freight may come. This is a matter of mutual arrangement among carriers in the Southern States, not required by any provision of law, and which apparently has been long in operation. So far as the statute is concerned it would be legitimate for the rates from New York City to points on the Cincinnati Southern *via* Chattanooga to be made progressively increasing, although such rates would necessarily exclude traffic, except at points where they were less than the rates made *via* Cincinnati. The method generally employed, however, has opened up all the lines of the Southern States to the most free interchange of traffic in every direction and by all possible routes; and the losses in some cases are compensated by corresponding advantages in others, so that the general result may not average unfairly.

Returning to the East Tennessee, Virginia & Georgia for the purpose of considering the individual tariffs used by that company, as distinguished from joint tariffs, an example is found in the tariff from Memphis east-bound. This is a pamphlet of about 60 pages, containing the rates to places named. The form of its preparation is in some respects excellent; the figures are plainly printed, and the extensions are said to be of actual rates, leaving nothing for computation. In general the Southern Railway & Steamship Classi-

fication applies, but the first column against the names of places is headed "For Exceptions to Classification see Note—;" and in the column below references are furnished to Notes found at the end of the pamphlet. The Classification proper is not printed, but about twenty pages are devoted to lists of so-called "Exceptions to Classification." These are numbered Note 1 to 7, inclusive, and Note A to Z, inclusive, thirty-two in all, each headed "Rates named in current printed tariffs to points indicated by letter—opposite will be governed by the following Exceptions to the Classification." Some of these Exception sheets contain only ten or twelve articles, others embrace more than one hundred. There is also a list of "Specials to Pensacola, Fla.;" also a Note (AA) containing special rates from Memphis to fifty-four competitive and junction points in the Southern States, upon thirty-eight leading articles. It is obvious that so far as classification is concerned the confusion is almost infinite. It was explained to be occasioned by the differences in use upon the roads on which the points named are located; thus Georgia points are said to be subject to the Georgia State Classification, etc. This explanation hardly fits the case, for State Classifications do not control interstate business. Certain roads have individual exceptions to the Classification, and a few have individual Classifications for local business, but they do not necessarily control on shipments from distant points. The absence of simple and uniform classification in the Memphis tariff was not satisfactorily explained, and a change in the methods employed seems to be a necessity.

This subject is now under consideration by a standing committee on Uniform Classification, organized by selection from the railroads and associations in all parts of the United States, which is working in the direction of uniformity throughout the entire country with, as is represented, a reasonable prospect of success. Whatever may be the outcome of this effort, lines now using cumbrous and detailed exception sheets may and should at once enter upon the work of reducing them to that direct and simple form which the Commission has so often recommended.

The effect of the classification methods used in the Mem-

this tariff may be illustrated by an example or two taken at random. Take Frankville, Georgia, 29 miles northwest from Macon; the class rates from Memphis to Frankville and to Macon, are as follows:

Class.....	1	2	3	4	5	6	A	B	C	D	E	F	H
Frankville.....	127	109	96	81	66	53	35	45	36	31½	60	69	68
Macon.....	103	88	77	64	52	42	24	34	29	25	46	50	51
Differences.....	24	21	19	17	14	11	11	11	7	6½	14	19	17
Georgia distance tariff —29 miles.	24	21	19	17	14	11	11	11	6	5½	14	12	17

The class rates to Frankville are therefore seen to be the rates to Macon plus the local rates back to Frankville, except in classes C, D and F where they are greater and apparently excessive, even under the system of combination rates.

Now applying these rates to some particular commodity, take for example, molasses, released, found in the Classification under Class 6; this would apparently give a rate to Frankville of 53, to Macon 42; but Note AA gives a special rate to Macon—24 cents. Under Frankville we are referred to Note L; here we find molasses, owner's risk, Class R; but opposite Frankville there is no rate on Class R, or on any class below H. The Georgia State Classification puts molasses under Class R (giving it practically a commodity rate) which for 29 miles is 7 cents; but this is not shown in the tariff and there is apparently no way to treat a shipment of molasses from Memphis to Frankville, except to leave it in Class 6 at 53 cents. The evidence shows that in practice it would be so treated. Nevertheless an intelligent shipper could ship to Macon at 24 and thence back to Frankville at 7, making the rate 31 instead of 53.

Given a 24-cent rate to Macon, the question whether even a 31-cent rate to Frankville is justifiable under the law is a very doubtful one. It would be difficult to find a practicable competing water line from Memphis to Macon. The rate of 53 cents shown in the tariff is wholly indefensible. It arises from the confused Classification and Exception sheets employed. It is no answer to say that there is no movement

of freight from Memphis to Frankville; there probably is not, but if that is the case the carrier would lose no revenue by having its tariffs correctly constructed, and might possibly in that way attract traffic.

Take another article, "Dried Fruit." In the classification it is found under Class 3, rate, Memphis to Frankville 96, to Macon 77; rate to Macon, Note AA, Dried Fruit, Released, is 31, any quantity; to Frankville, Note L, Owner's Risk, Car-loads, Class 6, 53; to Frankville, not at Owner's Risk, Car-loads, Class 4, 81; Georgia Classification, Class 3, rate, Macon to Frankville, 19. Out of all this we find that less than car-load shipments, Memphis to Frankville direct, would be at the rate of 96 cents; but to Macon and back to Frankville it would cost 31 plus 19, or only 50 cents. The notations in reference to "owner's risk," "released," "car-loads," etc., are not related to each other and the result in this case, as usual, is largely to the disadvantage of the local station. Such illustrations as these could be multiplied indefinitely. A tariff which presents them is not in conformity with the law, and should at once be corrected.

The Memphis freight tariff now under consideration gives rates to about two thousand points in the Southern States, including points on the line of the East Tennessee, Virginia and Georgia, and on the lines of its connections, all arranged in alphabetical order and without regard to location; the line on which the various points are situated is not stated. The method pursued in other similar tariffs, of arranging stations in their order as located upon various connecting lines, has some advantages over the method adopted here.

The tariff properly provides for its application to rates from St. Louis and Cairo by adding fixed differentials.

It further establishes, in some cases, two rates to the same point, designated as follows :

Live Oak, Fla. (For F. R. & N.).....	91, etc.
Live Oak, Fla. (Proper).....	150, etc.

This is confusing and appears discriminating. The fact seems to be that the first line of rates are divisions of a through rate to local points on the road of the Florida Rail-

way and Navigation Company. If this is the case, they are not properly stated as a rate to Live Oak, Florida.

This company also issues a tariff from Chattanooga to points in the Southern States, arranged on the same alphabetical plan, which is made applicable also from Knoxville by the addition of a 5 cent differential.

These two are the only general interstate tariffs on file by this company individually.

It would seem to be practicable for tariffs to be constructed upon some suitable plan, from Brunswick, Birmingham, Selma, Atlanta, and perhaps other important points, which could be used upon shipments to and from intermediate stations; such tariffs might also be adapted for use at neighboring points by providing in each case the proper addition or subtraction of the necessary sum. No attention apparently has as yet been given to this subject by the managers of the line.

An illustration of the effect and treatment of water competition is found in the Memphis tariff above referred to. Going east from Memphis the rates are lower to Tuscumbia and Florence than to Corinth and other points west of said places. The Company's witness states that those points are located on the Tennessee River, where regular lines of steamers are available to traffic from Mississippi and Ohio River points as far up the Tennessee as Florence. He further states that "We do not attempt to meet all the rates of river lines, but we get the best attainable rate to secure a fair proportion of the business and maintain our interests at those points. We make those rates by experience as to what we find just to the shipper, and our rates do not fluctuate with the changes that the river lines may see fit to make." This is effected by making the first-class rate to Corinth 45, to Cherokee 48, to Tuscumbia and Florence 34; and other class rates in proportion. No proof of rates by water has been submitted, nor any facts in respect to the commodities for which water transportation is available.

Proceeding easterly we find the rates as follows: Courtland 52, Decatur 34. Decatur is the crossing of the Louisville & Nashville Railroad. No water competition is found except

locally from Decatur through Chattanooga to Knoxville. Proceeding easterly again: Stevenson 55, Chattanooga 72, Athens 103, Knoxville 76, Johnson's 110, Bristol 84.

The higher rates charged from Memphis and St. Louis to intermediate points in East Tennessee than to Knoxville and Bristol are not conformable to the uniform rates from eastern cities to the same territory, nor was any satisfactory explanation given thereof. Attention was called to the fact that Bristol is reached by the Norfolk and Western from tidewater on the Atlantic ocean. How this can be claimed as a reason why the intermediate points should be charged a greater rate from Memphis than Knoxville and Bristol receive was not made clear.

The main line of the Louisville & Nashville Railroad extends from Cincinnati, through Louisville, Nashville, Birmingham, Montgomery, and Mobile, to New Orleans. A branch line extends from Memphis Junction in Kentucky to Memphis, Tennessee; another branch line from St. Louis, Missouri, crosses the Ohio River at Evansville, and intersects the Memphis branch at Guthrie, and the main line at Edgefield Junction, near Nashville. Various other branches are operated, including one to Lexington, Kentucky; one to Jellico, forming with the East Tennessee, Virginia & Georgia a line to Knoxville; another to Owensboro, on the Ohio River; another from a point in Illinois to Shawneetown, on the Ohio River; another to Pensacola, Florida, and thence east 161 miles to River Junction; another to Sheffield, Alabama, etc. Altogether it includes about 2,500 miles of road. This mileage has been reached by the addition from time to time, successively, of different roads to the general system. About 2,200 miles are now operated directly by the Louisville & Nashville Railroad Company in its own right, and the remainder are under its control as owner of a majority of the capital stock of the companies operating the same.

In certain respects this company has punctually and continually complied with the provisions of the Act to regulate commerce, particularly in the matter of placing tariffs on file in the office of the Commission, preparing and filing statis-

tical reports, etc. In so far, however, as the Act to regulate commerce attempts to exercise control over the rates charged for the transportation of freight, and the principles upon which such rates are constructed, this company has changed but very slightly the methods which it was accustomed to employ before the passage of the law. This it insists is not in any respect due to a spirit of antagonism to the law, but is justifiable under the construction which it places upon the language and intention of the statute. The views which it entertained respecting the requirements of the second, third and fourth sections of the Act were announced to the Commission immediately upon its organization, and were at that time the subject of careful consideration, the result reached being announced in the opinion above referred to (1 I. C. C. R., 31). That opinion defined with care and precision the principles which would govern the Commission in the administration of section four, or the short-haul clause, so-called, of the Act to regulate commerce. The suggestion was made in its conclusion, "that strict conformity to the general rule is possible in large sections of the country without material injury to either public or private interests; and that in other sections the exceptions can be and ought to be made much less numerous than they have been hitherto, and that when exceptions are admitted the charges should be less disproportionate."

The order for temporary relief which had been made upon the application of the petitioner was allowed to remain in force until the date originally limited for its expiration, to afford time for the revision of tariffs "in order to bring them as nearly as may be reasonably feasible into harmony with the general rule of the statute, and with the views expressed in this opinion." And it was further added, "That they may be brought much nearer to conformity than they now are, without the sacrifice of any substantial interest, we have very little question; and as business adapts itself to the new principle established by Congress, it will no doubt be found that exceptions can safely and steadily be made less and less numerous."

This opinion was filed June 15, 1887. The tariffs of this

company, as they were from time to time received by the Commission, failed to show any substantial modification in the direction referred to. What were known as competitive rates, meaning rates lower than the rates charged to other points in the vicinity, were taken away from a few comparatively unimportant railroad junction or crossing points; but the general system upon which the rates of this company were constructed remained absolutely without change. On October 22, 1887, the Commission made a general inquiry of all the railroads in the United States in respect to the conformity of their rates with the fourth section of the Act. The reply of the Louisville & Nashville Railroad Company, with arguments of its officers and counsel in support of its position, was received, and appears at page 166 of the First Annual Report of the Interstate Commerce Commission. From time to time this subject, together with the subject of the preparation and publication of tariffs on the part of this company, has been taken up by correspondence and in interviews between the Commission and its officials. The difficulties surrounding the situation have been carefully examined and freely admitted. Suggestions have been tendered in respect to various particulars in which changes in the direction of conformity to the law might be made. The Commission was given to understand more than a year ago that a general re-casting of the company's system of rate-making was in progress, and from time to time these intimations have been renewed. Nevertheless upon the hearing on December 18, 1888, this corporation continued to plant itself firmly upon the position that its tariffs were in conformity to the requirements of the law, and that no change in any respect could properly be required by the Commission.

In considering the questions now to be discussed the subject necessarily divides itself into two branches; first, the general method employed by this company in constructing its rates and in preparing its tariffs, under the interpretation which its officials have given to the law; and, second, the correctness of the interpretation of the fourth section of the statute which has been applied by this company to its interstate traffic.

First, therefore, we consider the tariffs of the Louisville & Nashville Railroad Company in the light of the requirements of section six of the Act to regulate commerce.

Traffic from points on the Ohio River and north thereof, passing to points upon and beyond the line of the Louisville & Nashville Railroad, is controlled by two general tariffs, known as the Southeastern and Southwestern Freight Tariffs, respectively. The latter reaches what is called the Southwestern territory, lying between the Mobile & Ohio Railroad and the Mississippi River; the other reaches what is called the Southeastern territory, including all points in the Southern States east of the Mobile & Ohio Railroad. Rates to the Southwestern territory are based upon rates from St. Louis, and are said to be controlled by the Mississippi River transportation. Rail rates from St. Louis to Memphis, Vicksburg, Natchez, Baton Rouge and New Orleans, called Mississippi River points, are fixed with reference to river competition; and the same river competition extends to rates between Evansville, Louisville and Cincinnati, and the same territory. The latter rates are established with relation to the rates from St. Louis as the basis, being to many of the points in the Southwestern territory the same as from St. Louis; and rates from Chicago, Terre Haute, Indianapolis, etc., are fixed by agreed differentials higher than the St. Louis rate.

To the Southeastern territory rates are made upon an entirely different basis, substantially being the rate from the initial point to the nearest point on the Ohio River, plus the rate from such Ohio River point to destination. The rates fixed by the Southern Railway and Steamship Association from the Ohio River crossings, Cincinnati, Louisville, Evansville, and from Memphis, are taken as the basis to basing points, for example, Nashville, Birmingham, Montgomery, etc., and from those points freight is transported to local and intermediate points in all directions at local rates, the nearest common or competitive point to the point of destination, or that point from which the addition of the local to destination would give the lowest rate, being used as the basing point.

North-bound rates to points north of the Ohio River from

the southwestern and southeastern territories, respectively, are made upon the same general principles.

Rates to local points on the lines of the Louisville & Nashville Railroad are constructed under the same rule, its connections being furnished with its local rates from its common, or basing points to its local points, and the company accepting a through rate, so made on what is called the "lowest combination." No attempt has yet been made to modify this system of combination rates by any general tariff or system of tariffs applicable to the lines of this company. Tariffs constructed with relation to distance are used in the same manner as before the law—by combination with the rates to the agreed basing points.

The attention of the officers of this Company has been called to the fact that the law contemplates the definite establishment of a rate of charges from every point on a line under one management to every other point on the same line, which the ordinary citizen can read for himself and understand without difficulty. The reason given for the failure of this company to remodel its tariffs and fix definite rates between points on its own line is, that it has not as yet found it possible to do so. It is claimed that the complications involved are too great to be practically overcome. For example, while the law obviously requires the establishment and publication of rates from Cincinnati, Louisville, etc., to points between Montgomery and Mobile, this company finds it necessary in making its freight charges upon such traffic to instruct its agents to build combinations rather than to establish rates which are open to public view. It further appears that the chief reason why this company has not found it possible to establish and publish a series of actual rates upon its individual interstate traffic is the complex system of classification in use. While other lines in all parts of the United States have gotten over the same difficulty by a simplification of the Classifications employed, this company has hitherto declined to change its classification methods, and has used the difficulties occasioned thereby as an excuse for its failure to conform to the provisions of the law. Traffic to its basing points is subject to the Southern Railway and

Steamship Classification, while traffic from its basing points to its local stations is subject to its local classification. This fact, it is said, renders impossible the establishment of definite rates from initial points to local stations. The Traffic Manager of the Company states as follows :

“A solution of these difficulties is apparently offered by applying on our local traffic the same Classification as applies to through traffic;” but he proceeds, “the fact remains that even in that event the difficulties are not overcome, and the impracticability, if not impossibility, of printing a local tariff always adjusted to competitive rates, under the peculiar circumstances governing the competition at so many of the points reached by this company’s lines, is not thereby surmounted.”

In further explanation he states that, “while the Southern Railway and Steamship Association Classification nominally applies from our western and northern termini to all common or basing points upon this company’s lines, as a matter of fact such is not the case. To Nashville there are 39 specials, to Birmingham there are 35 articles excepted from the general classification, to Memphis there are 21 specials and 58 additional exceptions to or changes in the general classification, and to New Orleans and Mobile there are 20 articles taking specified rates, and the same exceptions as apply to Memphis.”

The resulting complication, as he claims, is so great that a steady system of tariffs is impossible to be intelligently constructed. The company, therefore, made no attempt to comply with the law in this respect.

Other elements of complexity in classification might be added to its statement. The tariff from Cincinnati to Louisville is subject to the Official Classification, and the same classification applies also to other lines of traffic handled by the Louisville & Nashville where the competition is with the Trunk Lines of the Northern States; for example, between Nashville, Lexington, Memphis, etc., and the eastern cities. Between St. Louis and Shawneetown, Evansville and Hen-

derson the Illinois State classification is employed. In the Southwestern Freight Tariff above described, which is nominally subject to the Southern Railway and Steamship Association, there appear 33 exception sheets, each of them grouping a large number of articles varying in some respects from the standard classification, and rates on special commodities are made almost without number. The Local Classification which the Louisville & Nashville Railroad Company employs on all local traffic and in all combinations upon traffic deliverable to or received at local points on its lines, differs to a remarkable degree from other classifications elsewhere in general use. In explaining the difficulties of the situation, an official of the company pointed out the fact that there are very few articles in reference to which the enumeration is the same with that of the Southern Railway and Steamship Classification. The Louisville and Nashville Local Classification is in its result much higher. A computation "of the revenue actually derived during a stated period from the transportation of certain classes of property between certain representative local stations under the Classification now in use, and of the revenue that would have been derived from the transportation of the same kind and quantity of freight between the same points had the Southern Railway and Steamship Association Classification been in use," showed that the loss would have been over ten per cent.

Nevertheless it is claimed that during the past twenty years, this company has done much in the way of uniform classification, the present Local Classification having been substituted for no less than twelve different classifications which were formerly in use.

Since the passage of the Act to regulate commerce, however, so far as appears by the results as yet made public, such progress has ceased, and the tendency has been rather in the direction of increasing complexity than of simplification.

It is unnecessary to say that a confusion created or maintained by the carrier for its own purposes, cannot be used to justify a disobedience of the law. If changes in classification

methods are necessary in order to conform to the requirements of the statute, such changes should be made without hesitation. One of the most valuable results from the provisions of the law which demand the establishment and publication of schedules of rates, fares and charges, has been found to be the fact that in order to do this in conformity with the statute the abandonment of old classification methods became necessary; local classifications almost without number have been surrendered. Throughout the entire country this simplification has gone on, forced by the mandatory provisions for the establishment and publication of tariffs that shall not be varied from, and in respect to which the rates charged shall be neither higher nor lower than the actual sum named; nearly every road in the land now employs on its local traffic the general classification of its section. This was found to be a necessity; the law could not otherwise be obeyed, and the results, so far as can be observed, are satisfactory both to the public and the carriers.

The only attempt at justification of the perpetuation of confusion by any argument other than loss of revenue (which manifestly could be to some extent if not entirely compensated by re-adjustment of rates) is found in the following statement of the Company's officers:

"Should the Louisville and Nashville Railroad Company accept a classification of the Trunk Lines on shipments from New York destined to a point on its line between Cincinnati and Louisville that will make its proportion of the rate from Cincinnati either less or more than it would receive on similar shipments forwarded from Cincinnati proper, it would be an unjust discrimination, either for or against Cincinnati. Should the Company accept a classification of the lines north of the Ohio River on shipments from Chicago destined to local points on its line south of Louisville that would make its proportion of the rate from Louisville either more or less than it would at the same time be receiving for the transportation of like kind of property from Louisville proper to same destination, it would be an unjust discrimination in favor of or against Louisville. The same is true of traffic

reaching our lines at Nashville, Montgomery and other junction or terminal points."

And again:

"When this traffic reaches the competitive point, say Louisville, Nashville, Birmingham or Montgomery, it is transported thence by us to the local point for the same rate and under the same classification at which we transport similar traffic that may be forwarded by merchants from those points on our line. This is the only way to prevent an unfair discrimination. It would be an apparent injustice for this Company to haul a car-load of meat, or even a box of dry-goods, from Nashville for a local station south of Nashville at a lower classification, and consequently lower rate, when from St. Louis or Chicago, than when from Nashville proper."

The general idea of this line of reasoning is, that it is unjust discrimination against Southern distributing points to charge in the aggregate a less sum on business passing through such points to local points beyond, than when like commodities are purchased by merchants at such distributing points and by them re-forwarded. This question has several times been before the Commission; and it has repeatedly expressed its belief that such a charge not only would involve no unjust discrimination, but that it is at times a natural result of the application of the principles established by the Act to regulate commerce.

Crews agt. Richmond & Danville Railroad Co., 1 I. C. C. R., 401; (Danville case).

Martin agt. Chicago, Burlington & Quincy R. R., 2 I. C. C. R., 25 (Omaha case).

Second Annual Report of Interstate Commerce Commission, 30; (The Law in its Effect upon Cities).

But the point here in question does not go to the extent claimed; on the contrary, the discrimination referred to only exists in case the local shipment is under a higher classification than that employed in the shipment to the distributing point. If the classification is the same there need be no

discrimination whatever; the question then becomes one of rates purely. The argument assumes the necessity of keeping on foot a local classification; a necessity which is not established by proof, nor in any way obvious. Assuming, on the other hand, that the local classification was unknown, the rate from Chicago or St. Louis to a local point could still be the same as the rate to the distributing point with the local beyond added, or it could be less should a through rate to local stations be deemed advisable; and in neither case would any unjust discrimination necessarily be effected.

In arranging its local rates this Company proceeded originally upon a distance basis, recognizing the principle that as distance increases the proportionate rate should decrease. Upon the taking effect of the Act to regulate commerce it filed with the Commission a series of printed tariffs naming rates of freight from the more important points on the line, such as Cincinnati, Louisville, Nashville, Montgomery, Birmingham, Mobile, New Orleans, etc., to all local stations; it also filed a local freight tariff, in the form of a bound book compiled July 1, 1885, and containing the schedules from each local point as furnished to the individual station agents. In this book rates are shown from each point to every other point, by numerical references to a series of fifty division numbers, each of which represents a line of class rates, gradually increasing. It is admitted that the tariff rates between far-distant local points given in this tariff "can, in a number of cases, be cut by combination of rates to and from competitive points beyond," and it is not claimed that the agent in such cases "would apply any other rate than that given in his local tariff." But there is said to be little or no business between such local points, and that practically there is little injury caused by the inaccuracy of the tariffs placed in the agent's hands.

The tariffs from the basing points so filed were in force for some time prior to the passage of the law, and in most instances they remain to the present time without change. Tariff No. 5, dated March 1, 1886, may be taken as an example; it shows rates of freight from Cincinnati to all local stations on the Louisville & Nashville Road. Confining our

attention to Class 1, these rates increase from 5 cents at Newport, Kentucky, to 40 cents at Lagrange, 83 miles, and remain the same until the first station north of Louisville is reached. Rates to Louisville, Nashville and other competitive points are not shown; leaving Louisville, the first rate from Cincinnati is 37 cents, and the rates increase to 80 cents at Bowling Green, whence they remain identical to Nashville, a distance of 71 miles; leaving Nashville the rates commence at 72 cents and increase to \$1.06 at points near Decatur; going south from Decatur they increase to \$1.25 at points north of Birmingham; leaving Birmingham they increase to \$1.45 at points between Birmingham and Montgomery; they further increase to \$1.60, which is the rate named to all points within 80 miles of Mobile; and to points beyond Mobile the rate is \$1.65 nearly to New Orleans, and \$1.70 for the last 25 miles.

The rates to the basing points are as follows: Cincinnati to Louisville, 25 cents; Nashville, 53 cents; Decatur, 99 cents; Birmingham, \$1.08; Montgomery, \$1.08; Mobile, 98 cents; New Orleans, 98 cents.

Returning now to the first section, called the Cincinnati Division, between Cincinnati and Louisville, it appears that the rate to Sparta, 45 miles from Cincinnati, is 28 cents, which is greater than the rate to Louisville, and the same is true in respect to all stations between Sparta and Louisville, a distance of 65 miles. For the last twelve miles, covering nine stations between Anchorage and Louisville, a lower rate than the tariff is obtained by adding to the Louisville rate the local charges back from Louisville to the several stations. In reference, therefore, to those stations, the rates of freight named in the tariff are not the rates that would be actually charged, according to the Company's system of working rates. Although the Act to regulate commerce pointedly says that after schedules have been established and published it shall be unlawful to charge a greater or less compensation than is specified in such published schedule, nevertheless this schedule of rates from Cincinnati to the stations named is customarily departed from and a less amount is charged. This arises, it is said, from the fact that any shipper would have

the right to ship to Louisville at the Louisville rate and then return his shipment at the local rate to the neighboring point. This is undoubtedly true, and wherever rates are established less for the longer than the shorter haul it becomes necessary to give the combination at points near the more distant terminal or basing point. This fact, however, would not make it impossible for the published tariff to show the rates to such points correctly instead of incorrectly; under such circumstances tariffs may be so constructed that they show a decreasing rate as they approach the more distant terminal. The real reason why this tariff can not be so constructed lies in the matter of different classifications above described. The rate from Cincinnati to Louisville is subject to the Official Classification. Very many articles are classified higher in the Louisville & Nashville Local Classification than in the Official, and in point of fact a shipper to Louisville under the Official Classification and thence back along the line under the Local Classification would be able to extend the re-flex influence of the lower through rate on many and probably most commodities for a considerable distance east of Anchorage; so long as two Classifications are used in constructing rates from one point to another no accurate publication of the rate can be made. There is no possible way of escaping from this difficulty except for the diversity of classifications to yield to the demands of the law.

As Tariff No. 5 is further examined similar inaccuracies repeatedly appear. The rates from Cincinnati to both Mobile and New Orleans being 98 cents, as above stated, there is not a single point between those places at which the combination is not less than the published tariff. The schedules, therefore, from Cincinnati for the entire division between Mobile and New Orleans are untrue, and the difference in classification intensifies their incorrectness.

The same thing exists in reference to the entire series; they are full of mis-information and they fail to conform to the requirements of the law.

While this subject has been treated as though the methods of computing rates by combinations was well known by all the local agents of the Company, as well as by its shippers,

there is considerable difficulty in assuming such to be the fact; if so it arises from custom and oral instruction, rather than from any explicit orders shown to have been issued. The tariffs themselves contain no intimation whatever that any reductions from the tariff rates are obtainable through combination or otherwise; such tariffs posted in the stations and placed in the hands of station agents would apparently authorize the collection of the charges published. Upon the attention of the officials of the Company being called to this point a circular was produced, dated October 2, 1885, instructing agents at Cincinnati, Louisville, Evansville, Owensboro, Henderson and East St. Louis, to make rates to all local stations south of Nashville by taking the rates to Nashville, Decatur, Birmingham, Calera, Montgomery, Mobile or Pensacola, and adding the rates from Nashville, Birmingham, etc., to local stations whenever the total rate so arrived at is less than the tariff rate from initial point to said local station. No circular is produced authorizing agents at any other points to make rates in this manner and although it is not believed that such rates are customarily made otherwise than in conformity with the method testified to by the Company's officials, nevertheless, in the absence of explicit instructions there is obviously a door open for a great amount of imposition upon the public.

This Company has been at considerable pains to obtain information from its station agents respecting the extent to which its published tariffs are consulted by their patrons. With very few exceptions the agents unite in saying that the posting of the rates is useless, that their patrons are accustomed to call upon them for information respecting each shipment and to accept the figures furnished without question, and that they never observe them examining the posted schedules. The collection of this evidence was entirely unnecessary. In view of the fact that the schedules published for posting confessedly do not give the rates which would actually be charged in a very great number of instances, and in view of the double classification universally employed in shipments to basing points and thence to local points, in both directions, it is not at all surprising that the public fail

to consult the tariffs; there would apparently be no use in their doing so, as any information which they might gather from schedules so prepared would be of no practical value.

What the custom of the public might be in case the published schedules conformed to the requirements of the law is not shown by any experience at the stations of this road. It is proper to add, however, that the requirement for publication found in the law is based upon many other considerations besides that of affording information to local shippers. The necessity of establishing and maintaining a steady, uniform, open tariff rate is of paramount importance, in view of the evils which the Act to regulate commerce attempts to correct; and obviously the first and most efficient method of regulation is the requirement of constant publicity. That this requirement has proved of no practical value upon the line of the carrier now in question does not arise from the fault of the law, but from the fact that the law has been persistently disobeyed; whether the requirement is, or is not, a proper one, is a subject upon which it would be improper for the Commission to enter; arguments excusing violation of the law upon the theory that its provisions are useless, can not be entertained. That question is not submitted to the discretion of the Commission, or of carriers. The requirement of the law is obvious and plain; there is no physical impossibility in constructing classifications and rates which shall conform thereto; the duty of the Commission is clear, and requires it to insist upon such classifications and schedules being put in operation by the Louisville & Nashville Railroad Company.*

Coming, in the second place, to the question of whether the tariffs of the Louisville & Nashville are in conformity

*Since the above opinion was prepared the following letter has been received from the Louisville & Nashville R. R. Co., the new tariffs referred to were received by the Commission on March 28; so far as there has been opportunity for their examination they appear to substantially meet the criticisms above made, and to conform to the requirements of Section 6 of the Statute :

with the requirements of section four of the Act to regulate commerce, there is no present occasion for a general discussion of the meaning of this section; the views of the Com-

LOUISVILLE, KY., *March 25, 1889.*

C. C. McCAIN, Esq..

Auditor Interstate Commerce Commission, Washington, D. C.

DEAR SIR:

I send you by express to-day a copy of this company's new local freight tariff fixing the rate for transportation of freight between all stations on the lines of the Louisville & Nashville Railroad (owned, leased and operated lines), South & North Alabama Railroad, Birmingham Mineral Railroad, Owensboro & Nashville Railway, Nashville, Florence & Sheffield Railway, and Pensacola & Atlantic Railroad.

Several months were spent in the preparation of this new tariff for the purpose of properly adjusting the company's local rates to the classification of the Southern Railway & Steamship Association. It was desired to have the tariff effective on January 1, 1889, and blank forms were printed accordingly with that date. It was found impossible, however, to have the tariffs properly prepared and in the hands of agents and the public so as to be effective on January 1, and it was therefore made effective between all stations on January 15, 1889. Since that date, therefore, the local classification of the L. & N. R. R. Company has been the Southern Railway & Steamship Association classification, with exceptions as noted. Special efforts were made to adopt the S. R. & S. S. A. classification entire and the exceptions that have been made, few in number, are of two kinds:

1st. Articles for which the S. R. & S. S. A. classification provides one class while the local classification provides another, as follows:

Articles.	Class.	
	S. R. & S. S.	L. & N.
Agricultural implements, C. L.....	5	L
Barrel and box material, C. L.....	A	N
Boilers, engines, etc., C. L.....	6	L
Cars, logging or mining, C. L.....	6	L
Charcoal in bbls. or casks, C. L.....	A	M
Dry goods, "cotton piece goods," etc.....	6	3
Lumber, dressed N. O. S., and rough, including fence posts, etc., C. L.....	6	N
Lumber, dressed N. O. S., and rough, including fence posts, etc., L. C. L.....	4	6
Machinery, N. O. S., C. L.....	6	L
Machinery, cotton mill, C. L.....	6	L
Oil, coal or its production, in tank cars...	6	Special tariff.
Pipe and tile, drain or roofing, C. L.....	A	N
Pipe, earthen or concrete, C. L.....	A	N
Tobacco, unmanufactured, in casks or hogsheads.....	4	6
Vehicles, carriages, buggies, etc., C. L...	4	L
Vehicles, wagons, carts, C. L.....	5	L

mission have been often expressed; first in the opinion above referred to, and subsequently in repeated instances. No reason for modification of those views has been as yet found, either upon further consideration of the language of

2d. Articles for which the S. R. & S. S. A. classification provides no specific class but governed by Note 9 of said classification. In order to prevent confusion additional classes to the S. R. & S. S. A. schedule have been made in our local schedule, designated as "L" "M" "N," in which these articles have been included. Also, as a matter of convenience, this company has indicated articles which in the S. R. & S. S. A. classification take the special iron rate as class "I." While we have comprised in the list of exceptions printed at the head of the classification our rates on live stock, they are not properly exceptions to the S. R. & S. S. A. classification, as that classification specially provides that the rates on live stock are to be the locals of each road.

The division numbers referred to in the table of rates from each station will be found in the local tariff in tables "A," "B," "C," and "D," respectively. Table "A" prescribes the division numbers governing the charges between all stations except (1) between stations on the Louisville, Harrod's Creek & Westport Railroad; (2) between stations on the Pensacola & Selma Railroad and between stations on the Pensacola & Atlantic Railroad; (3) between stations on the St. Louis Division and branches. Table "B" prescribes division numbers governing the charges between all stations on the Louisville, Harrod's Creek & Westport Railroad. Table "C" prescribes division numbers governing charges between all stations on the Pensacola & Atlantic Railroad and between all stations on the Pensacola & Selma Railroad. Table "D" prescribes division numbers governing the charges between all stations on the St. Louis Division and branches; this table being fixed by the Illinois Railroad and Warehouse Commissioners.

In connection with the tariffs now submitted, I beg to refer you to the communication from Mr. M. H. Smith, Vice-President, to the Interstate Commerce Commission, dated Louisville, March 21, 1887, transmitting the rates then in effect over the lines owned, leased and operated by this company. Also, in further explanation of the adjustment of rates herein made, I beg to refer to the statements submitted by Mr. M. H. Smith, Vice-President, and myself, at a hearing before the Honorable Interstate Commerce Commission at Washington, D. C., on December 18, 1888.

I regret that there has been some unavoidable delay in compiling these tariffs in their present shape on file with the Interstate Commerce Commission, but I trust that the form in which they are now presented will be found convenient, and enable you to refer readily to any rate effective between any of the more than 750 stations that these tariffs govern.

Yours truly,

S. R. KNOTT,
Traffic Manager.

the section, or in the light of facts which have from time to time been developed in the practical conduct of interstate commerce. The Louisville & Nashville Railroad Company, as has already appeared, is accustomed on very many parts of its several lines and branches to charge a greater sum for the shorter haul than for the longer. This is done in both directions, and upon a general principle of regulating its charges which had been in force for many years prior to the passage of the Act.

Recognizing as correct what was said in the opinion above cited that "the existence of actual competition which is of controlling force in respect to traffic important in amount may make out the dissimilar circumstances and conditions entitling the carrier to charge less for the longer than for the shorter haul over the same line in the same direction, the shorter being included in the longer in cases, *first*, where the competition is with carriers by water, which are not subject to the provisions of the statute, *second*, where the competition is with foreign or other railroads which are not subject to the provisions of the statute, *third*, in rare and peculiar cases of competition between railroads which are subject to the statute, when a strict application of the general rule of the statute would be destructive of legitimate competition"; and further recognizing the fact that the rates of this carrier between its Ohio River terminals and points like Memphis, New Orleans, and to some extent, Mobile, Selma, and Montgomery are affected by competition with carriers by water not subject to the regulation of the Act, it nevertheless is obvious that very many of the violations of the fourth section found in its tariffs cannot be justified under the circumstances and conditions above defined.

That opinion, among other things, affirmed that the exceptional circumstances and conditions did not arise in cases where the lesser charge on the longer haul has for its motive a purpose to build up particular manufacturing establishments or special branches of industry, when the natural effect would be the detriment or discouragement of others; nor where it is designed to favor business or trade centers at

the expense of less important points; nor where the lesser charge on the longer haul is merely a continuation of the favorable rates under which trade centres or industrial establishments have been built up.

It is not apparent, in respect to the tariffs now under consideration, that the lesser charge on the longer haul has for its motive the encouragement of manufacturers or other branches of industry, except such as are located at a few favored places; on the contrary, many examples appear in which the precise converse of this is the case, and the rates as constructed operate to discourage manufactures and to interfere with local industries. For example, on the line of the Louisville & Nashville Railroad from 20 to 80 miles south of Nashville, in Tennessee, there are several milling stations from which south-bound shipments are made over the line of this company.

A circular issued January 30, 1889, reads as follows:

“Effective at once, rates on milled products of grain from Franklin, Tenn., West Harpeth, Tenn., Claiborne, Tenn., Dark’s Mills, Tenn., Columbia, Tenn., and Pulaski, Tenn., to all points named in Current Southeastern Tariff and Supplement thereto (except Clarksville, Tenn.), will be five cents per hundred pounds higher than the rates from Nashville, Tenn.”

The rates charged on the product of the mills in question have varied somewhat at different times since the passage of the Act; the present basis is shown by the above circular. The effect upon these industries of a higher charge than is charged Nashville mills, or than is charged Nashville merchants who distribute through the territory in question, is obvious.

A similar state of things exists in reference to milling points in Kentucky, of which there are several on this line of road. Another circular, dated January 29, 1889, establishes rates therefrom to points south on mill products, as follows:

“Effective at once, rates on milled products from local sta-

tions to all points named in current Southeastern and Southwestern Tariffs, and Supplements thereto, (except to Nashville, Tenn., and Clarksville, Tenn.), are as follows:"

Below appear the names of a large number of points from which agents are directed to make through rates by adding to rates from Louisville, or from Evansville, a certain number of cents per hundred pounds, or per barrel of flour, as the case may be; for example, from Bowling Green, Kentucky, 114 miles south of Louisville, the directions are to add to the Louisville rate six cents per hundred on flour in sacks, and sixteen cents per barrel on flour in barrels; from Hopkinsville, Kentucky, 84 miles south of Evansville, add to the Evansville rate four cents per hundred, or twelve cents per barrel. Over thirty milling points are thus treated. These rates are somewhat more favorable than they have been at times; nevertheless their present adjustment affords a vivid illustration of the tendencies of the system in the repression of local industries.

The same state of things exists in reference to other commodities, and probably with greater force; for example, the charge on any article of manufacture at points like Trenton, a hundred miles south of Evansville, to points in the more southern States, would be considerably greater than the charge from Evansville or Henderson; and so in respect to all points in Kentucky and Tennessee south of the terminals or basing points, respectively. And so again the charge on flour from Bagdad, Kentucky, 52 miles east of Louisville, to Newport News, is $27\frac{1}{2}$ cents per 100 lbs. while the rate from Louisville to Newport News is only $18\frac{1}{2}$ cents per 100 lbs. In this case the rate from Louisville and from Lexington to Newport News is the same, while the Louisville & Nashville R. R. Co. charges 9 cents per hundred pounds additional for the haul of 42 miles from Bagdad to Lexington.

So in respect to rates combined in the other direction. From Louisville to Birmingham the rate on flour is 40 cents per barrel; to Warrior, 24 miles north of Birmingham, the rate is made by the addition of 22 cents local from Birmingham to Warrior to the Birmingham rate in car-loads, and 24

cents if less than car-loads, thus making the rate to Warrior more than 50 per cent. higher than the rate to Birmingham. The rate on oil to Cullman's, 54 miles north of Birmingham, is made by the addition of 18 cents to the Decatur and the Birmingham rate, the latter being $37\frac{1}{2}$ cents from Cincinnati, while the rate to Cullman's is $55\frac{1}{2}$ cents. The rate on oil from Cincinnati to Montgomery is $37\frac{1}{2}$ cents, and to Mobile $24\frac{1}{2}$, while the rate to Greenville, 44 miles south of Montgomery, is $58\frac{1}{2}$. These figures are taken from the oil tariff of the Louisville & Nashville Railroad Company taking effect January 1, 1889. Illustrations of this character might be extended without limit. They are of the precise nature of the cases which the Commission had in mind when it said, in disposing of the original Louisville and Nashville petition, that "exceptions can be and ought to be made less numerous than they have been hitherto, and when exceptions are admitted the charges should be less disproportionate."

In advising the reduction of the number of exceptions to the statutory rule, the Commission does not mean that particular articles should be excepted from the customary rates at particular points or upon special considerations, but that the general system of making the rates at points like those which have been referred to, and which are actual cases of complaint received by the Commission, should be re-constructed.

The principal traffic at the intermediate points will be carried on at local rates from the accustomed points of supply in the immediate vicinity, and while some slight detriment may occur to the business of distribution from interior points, nevertheless the intention of the law can clearly be seen to be to give the citizens at local points the option of dealing with far-distant markets upon even terms with citizens situated at points that have been heretofore accustomed to control the trade of large surrounding districts, instead of upon terms which operate to prevent them from doing so. This being the purpose and policy of the law, it is not proper for the Commission, or for the carriers, to stand in its way. In the opinion of the Commission, rates like those mentioned above, to Cullman's and to Warrior, or like the rates

from the flouring mills in Tennessee and Kentucky to southeastern points, unaffected by water competition, are illegal and unjustifiable. No circumstances or conditions are found to exist which justify in such cases the exaction of the greater charge for the shorter haul in the same direction over the same line.

In cases where actual water competition exists, which is of controlling force in respect to traffic important in amount, entitling the carrier, under what the Commission believe to be a liberal though just construction of the statute, to charge less for the longer than for the shorter haul over the same line in the same direction, the question still remains as to the disparity which may properly be allowed between the rates to such competitive points and the rates upon the shorter haul to or from points intermediate. Upon the line of the Louisville & Nashville Railroad Company this disparity is at times very considerable, so considerable as to be unjust.* If a rate on oil of $24\frac{1}{2}$ cents per hundred pounds from Cincinnati to Mobile is a remunerative rate, a fact which must be assumed from its establishment and maintenance by the carrier, then a rate of $58\frac{1}{2}$ cents to Greenville, Alabama, or $55\frac{1}{2}$ cents to Cullman's, must yield an amount of profit wholly out of proportion to the reasonable requirements of compensation for traffic carried for the public by a common carrier. In the Greenville case 34 cents per hundred pounds remain after paying the amount of $24\frac{1}{2}$ cents which the Mobile rate recognizes as a reasonable compensation for the longer service. It is difficult to ascertain what would be a just measure of disparity in cases where the circumstances and conditions of the case warrant an exception to the rule of the statute. The reduction of the long distance rates becomes more extreme as the severity of the competition increases and is often found to be the greatest at the terminus of the longest route; nevertheless it is always optional with the carrier to

* The new tariffs filed by this Company on March 28, 1889, considerably reduce the disparity which formerly appeared between rates on classified freight to local points, and to more distant competitive points; and on some portions of the line the exceptions heretofore made to the strict rule of the fourth section have now disappeared.

decline to accept traffic that does not afford a remunerative rate, and the establishment of the rail rates in cases of this kind has, without doubt, at times been occasioned by a determination to absorb the traffic and prevent the maintenance of competition by water.

The views above expressed, which have been illustrated by actual facts concerning the traffic of several important roads, are perhaps sufficient to show the opinion entertained by the Commission concerning the matters enumerated in the Order of Notice. Other carriers to whom notice was given attended the hearing and the investigation embraced to some extent their methods. Enough has been already said, however, to fairly represent the condition of the whole, without minute elaboration concerning the remainder.

The Nashville, Chattanooga & St. Louis is closely affiliated with the Louisville & Nashville; it uses the same classification on local business, and pursues the same general methods.

The Central Railroad and Banking Company of Georgia, which operates several very important lines connecting Savannah, Georgia, with Macon, Atlanta, Columbus, Montgomery, Selma and Birmingham, has from time to time somewhat modified its tariffs. It does not publish with the precision required by the law interstate tariffs for traffic on its own lines between Alabama and Georgia points. In its interstate traffic to and from the eastern cities and the interior it was formerly accustomed to universally employ the system of combination rates above described; of late it has modified its custom in that regard by establishing between its basing points a grouped line of rates, reducing the disparity which was formerly created by the addition of locals in every case and which necessarily operated to make some intermediate point higher than others on either side. For example, in an amendment of December 15, 1888, to the pamphlet entitled "The Best Way to Ship," which gives rates from eastern cities on freight shipped by water to Savannah, this line considerably reduced its rates to intermediate points,

making the rate of \$1.31 on the first class a maximum, replacing in some cases rates which were as high as \$1.50, \$1.55 and \$1.62; for example, to Cowarts, situated upon a branch of this system running southwest from Albany, Georgia, the rates on the different classes from New York City were as follows:

<u>1</u>	<u>2</u>	<u>3</u>	<u>4</u>	<u>5</u>	<u>6</u>	<u>A</u>	<u>B</u>	<u>C</u>	<u>D</u>	<u>E</u>	<u>H</u>
162	143	130	111	90	68	58	58	42	42	90	96

These rates on December 15th last were made as follows:

<u>1</u>	<u>2</u>	<u>3</u>	<u>4</u>	<u>5</u>	<u>6</u>	<u>A</u>	<u>B</u>	<u>C</u>	<u>D</u>	<u>E</u>	<u>H</u>
131	111	98	83	69	56	46	56	42	41	67	78

Similar reductions were made at other points on the same branch; also at points between Americus and Eufaula; between Davisboro and Macon; between Sunnyside and East Point; between Macon and Columbus, etc. So far as these changes have extended they have been in the direction of reducing the disparity between competitive points and points intermediate. Some points are still treated as competitive and get exceedingly advantageous rates as related to intermediate points, concerning which it is difficult to see the grounds upon which the discrimination is made.

Upon the five roads operated by the Cincinnati, New Orleans and Texas Pacific Railway Company, called the Queen & Crescent Route, local rates have been established which are progressive in their form and not violating the general rule of the fourth section of the Act except at river points. Traffic over this line from points north and east of the Ohio River is controlled by the same principles, except in the vicinity of certain river and junction points, for example, Chattanooga, Birmingham, Meridian, Jackson, Vicksburg, Shreveport, New Orleans, etc. At some of these cities actual water competition exists. In respect to other basing points shown on this company's through freight tariff, situated on its line and on the lines of its connections, it expresses a willingness to engage in a general re-adjustment of rates for the purpose of more strict conformity with the rule of the fourth section of the Act. So long as the rates of its com-

petitors at points where the line of this road is crossed, and other points in its vicinity, are made as at present, for this company to change its own tariff would apparently involve the abandonment of traffic. Its officers are quite ready to say that the changes which it has made in the direction of conformity to the law have not been detrimental to its revenue, but on the contrary have benefited the carrier and have produced a feeling of satisfaction along its line, which is of material assistance to the prosperity of the road.

Similar results have been experienced by the Illinois Central and other southern roads which have entered upon the same policy.

So far therefore as the experience of carriers, during the time since the passage of the Act, has developed results consequent upon the actual introduction and application of the short-haul rule, it is clear that the evils anticipated were, to a large extent, non-existent, and that the relations between the carriers and their patrons have been quite materially improved. It is also clear that the present is not the time to stop the movement in this direction, but that it should be still further pressed in conformity with the suggestions hereinbefore made. The additional changes called for embrace many of the topics enumerated in the Order of Notice under which this proceeding has been had.

The greater charge for the transportation of a like kind of property for a shorter than for a longer distance over the same line in the same direction is found to be made at many points where it is in the opinion of the Commission unjustifiable; the disparity between the charges made at different points over the same line is in some instances apparently much too great. The form of the tariffs as prepared in many cases does not meet the requirements of the law; and in other cases the tariffs do not show the rates actually charged to shippers. Combination rates are made which are different from the rates specified in the tariffs as published and filed; the classifications in use remain complicated and involved, containing many exceptions and variations; different classifications are at times used upon the road of the same carrier

for the shipment of the same commodity to neighboring points; at times two or more classifications are employed upon the same shipment in fixing a so-called combination rate upon the line of a single carrier, or of two or more connecting carriers. In these and other respects which have been above described the methods pursued are not in conformity with the requirements of the Act to regulate commerce.

The Commission has repeatedly said that the re-arrangement of rates and the simplification of classifications are matters which the carriers should undertake and should carry forward for themselves. Many questions of detail are involved with which it would not be easy for the Commission to deal. In order to effect the reforms recommended much labor and care are necessarily required, and a reasonable time for the purpose should be allowed.

The order of the Commission therefore is that the carriers named in the order of notice comply with the Act to regulate commerce in the particulars and respects hereinabove pointed out, without unnecessary delay, and make report to the Commission of their action in the premises. If the action so reported shall seem to the Commission to fall short of what is required by the law, further action will be taken.

IN RE RICE, ROBINSON AND WITHEROP v. THE
WESTERN NEW YORK AND PENNSYLVANIA
RAILROAD COMPANY.

Petition by Complainants for leave to open this case and take further testimony therein. Received and decided April 15, 1889.

After a case has been decided, a petition to open it for further testimony and a re-hearing should be verified, and should indicate the nature of the new testimony and its purpose.

When a question of general public interest is involved, the Commission, in its own discretion, and in furtherance of justice, may open a case to give parties the benefit of a more extended investigation of the same subject matter in other pending cases.

MEMORANDUM.

BY THE COMMISSION :

A decision adverse to the complainants was rendered in this case on the 30th day of November, 1888.

Since that date complaints have been filed by other refiners and shippers of oil in the same territory against the same railroad company and other lines of road concerning the rates charged for transporting refined oil, and those cases, being at issue, have, been set for hearing at Titusville, on the 15th and 16th of May next. The complainants ask for leave to give further testimony in this case at the same time and place.

The petition now presented sets forth certain points in support of which further testimony is asked to be taken. These are substantially the same questions litigated on the former hearing, and it is not stated that new testimony has been discovered or that material evidence of a different character can now be given, nor is the petition verified, as, strictly, such petitions should be.

It is set forth, however, that the traffic will not bear the rate charged to Buffalo, and that the condition of respondent's business warrants a reduction of the rate.

As conditions of transportation vary from time to time, and rates should ordinarily be adjusted to such changed con-

ditions, it is possible that the petitioners may be able to show that a lower rate at the present time is reasonable and just, and it is only fair that they should have the opportunity to do so. The petition, however, would be insufficient in a court of law, as it is only unspecified cumulative evidence upon points already adjudicated that is proposed to be given, and standing alone it would be sufficient here, although technical rules of procedure are not insisted on, and equitable considerations largely enter into the question of rates. But as the whole subject of rates upon refined oil is to be investigated in the same locality, and all the refiners similarly situated have interests in common, these petitioners ought not to be precluded from sharing the benefit of any light that may come from that investigation. In view of that fact and in the furtherance of justice the defects of the petition may be disregarded. Under such circumstances the Commission might with propriety open a case without an application for the purpose, and without previous notice to either party.

An order may be entered, therefore, that the case will be regarded as opened for further evidence at the time and place mentioned, upon the points specified in the petition, and the testimony taken in the other cases to be considered in this case so far as it may be applicable.

IN THE MATTER OF THE INVESTIGATION OF THE
ACTS AND DOINGS OF THE GRAND TRUNK
RAILWAY COMPANY OF CANADA IN THE
TRANSPORTATION OF TRAFFIC FROM THE
UNITED STATES INTO CANADA.

Hearing at Washington, April 4, 1889. Decision filed April 18, 1889.

The provisions of the Act to regulate commerce apply to foreign as well as domestic common carriers engaged in the transportation of passengers or property, for a continuous carriage or shipment, from a place in the United States to a place in an adjacent foreign country.

The common carriers engaged in such transportation are subject to the provisions of the Act in respect to the printing of schedules of rates, fares, and charges for the traffic they carry, the posting and filing with the Interstate Commerce Commission of copies of such schedules, the notice of advances and reductions, and the maintenance of the rates, fares and charges established and published and in force at the time.

Such common carriers are also subject to the provisions of the Act in respect to joint tariffs of rates, fares and charges for continuous lines or routes.

The carriage of freights can not be prevented from being treated as one continuous carriage from the place of shipment to the place of destination by any means or devices intended to evade any of the provisions of the Act.

Under the provisions of the Act the Grand Trunk Railway of Canada is required to print, post and file its schedules of rates and charges for the transportation of property from points in the United States to points in Canada, and cannot lawfully charge, demand, collect, or receive from any person or persons a greater or less compensation therefor, or for any services in connection therewith, than is specified in such published schedule as may at the time be in force.

Upon an investigation by the Commission it appeared that the Grand Trunk Railway Company of Canada transports coal and coke under a schedule specifying a total rate from Buffalo, Black Rock, and Suspension Bridge, in the United States, to Hamilton, Dundas, and several other points in Canada, and that the published tariff rate for such transportation from points named to Hamilton and Dundas is one dollar a ton, but that it accepts a reduced charge or allows a rebate of twenty-five cents a ton in favor of certain consignees at Hamilton, Dundas, and other points in Canada.

Held, that the reduced charge accepted, or rebate allowed, is in violation of the Act to regulate commerce and unlawful.

The Interstate Commerce Commission has authority to institute investigations and to deal with violations of the law independently of a formal complaint, or of direct damage to a complainant.

Ashley Pond, for Michigan Central Railroad Co.

Otto Kirchner and *E. W. Meddaugh*, for Grand Trunk Railway Co.

REPORT AND OPINION OF THE COMMISSION.

SCHOONMAKER, *Commissioner*:

On the 26th day of March, 1889, documentary evidence was filed with the Interstate Commerce Commission, by the Michigan Central Railroad Company, tending to show that the Grand Trunk Railway of Canada had violated, and was still violating, the provisions of the Act to regulate commerce, by granting rebates on traffic taken and carried by it from points in the United States to points in the Dominion of Canada, and also by charging less than its published tariff rates on such traffic. The Commission thereupon, on said 26th day of March, 1889, issued an order notifying the said Grand Trunk Railway Company of Canada to appear before the Interstate Commerce Commission, at Washington, on the 4th of April, 1889, to answer concerning the aforesaid matters, and to submit to such investigation as might be made by the Commission. The order having been duly served, the Grand Trunk Railway Company duly appeared on said day, by its Counsel and its Traffic Manager, and the Michigan Central Railroad Company also appeared, by its President and its counsel.

By consent of the respective parties the facts as they appeared in the documentary evidence which had been filed, were, for the purposes of the hearing, admitted to set forth correctly the facts in the case.

The material facts are as follows: The Grand Trunk Railway Company, a corporation chartered under Canadian laws and operating its principal lines in that country, is engaged in the transportation of traffic from points in the United States to divers points in the Dominion of Canada, and uses for the purpose of such transportation the Suspension Bridge across the Niagara river, near Lewiston. For the purpose of such transportation said Grand Trunk Railway Company publishes and files with the Interstate Commerce

Commission tariffs of its rates and charges upon such traffic. A tariff sheet for this purpose, taking effect October 15, 1888, was published and filed with the Commission. This tariff shows rates from Buffalo, Black Rock, and Suspension Bridge, all in the United States, to divers points in the Dominion of Canada. The rates from the points named to Hamilton and Dundas, in Canada, are one dollar per ton on coal and coke, and to Chatham \$1.25 per ton, and different rates to other different points.

Some correspondence having taken place in November and December, 1888, and January, 1889, in reference to the consignment of three car-loads of coal, by mistake, from the Buffalo, Rochester & Pittsburgh R. R. Co. and N. Y. Central R. R. Co. to the Michigan Central Railroad, that were intended to be consigned over the Grand Trunk Railway to Hamilton, in Canada, it appeared by a claim made for a reduced rate on the coal, by the consignees at Hamilton, that the Grand Trunk Railway allowed certain rebates, or accepted rates less than those specified in the published tariffs, to certain consignees in Canada. Following this discovery, on the 8th of February, 1889, President Ledyard, of the Michigan Central Railroad Company, addressed to General Manager Hickson, of the Grand Trunk Railway Company, at Montreal, a letter, of which the following is a copy :

“DETROIT, MICHIGAN, *February 8, 1889.*

“JOSEPH HICKSON, Esq.,

“*General Manager of the Grand Trunk Railway, Montreal.*

“DEAR SIR: Written evidence, of the reliability of which there seems to be no question, has come into my possession, showing that during the month of October last the published tariff of your company on coal, coke, etc., from Buffalo, Black Rock and Suspension Bridge, to certain points in Canada, being \$1.00 per ton, special rates of 75 cents per ton on this traffic were quoted by your company, and the traffic carried at such rates.

“Your traffic officers hold, I am advised, that traffic consignments from Buffalo, Black Rock, or Suspension Bridge to Canadian points, is not subject to the provisions of the

Interstate Commerce Act. I hold differently, and in order to settle the matter, propose, unless you have serious objections thereto, to lay these papers before the Interstate Commerce Commission, and ask for a ruling thereon.

“Yours truly,

(Signed)

“H. B. LEDYARD,
“*President.*”

On the 16th day of February, 1889, the General Manager, to whom the foregoing letter was addressed, replied as follows:

“DEAR SIR: I duly received your letter of the 8th inst., respecting the rates charged by the Grand Trunk Company on coal from Buffalo and Suspension Bridge, to certain points in Canada.

“You are correct in stating that a portion of this traffic has been carried on a rate of 75 cents per ton. This 75-cent rate is not concealed, and every shipper similarly circumstanced has the benefit of the conditions.

“In the case of the smaller shippers, our yards are encumbered with consignments to be taken away as found convenient by consignees. In the case of large shippers, yards are provided or arrangements made for at once releasing the cars. The ‘circumstances and conditions’ therefore are not similar; and there is no unreasonable or unfair discrimination in quoting a lower rate to all shippers who provide special facilities for promptly handling large consignments of coal.

“This course appears to me to be consistent with the interests of the railway carriers; and there is no principle involved which would conflict with the laws of the United States.

“I cannot see that anything will be gained by taking the matter before the Interstate Commerce Commission, and I trust that on further consideration you will not think it necessary to do so. Are the interests of the Michigan Central Company in any way prejudiced by the existing arrangements?

"The Grand Trunk Company are acting strictly under legal advice in regard to this business.

"Yours truly,
(Signed) "J. HICKSON,
"General Manager.

"H. B. LEDYARD, Esq.,
"President Michigan Central Railroad, Detroit, Mich."

Further correspondence took place, the whole of which need not be given. On the 21st of February, 1889, Mr. Ledyard again wrote to Mr. Hickson, as follows:

"DETROIT, MICHIGAN, February, 21, 1889.

"JOSEPH HICKSON, Esq.,
"General Manager Grand Trunk Railway, Montreal.

"DEAR SIR: I have your letter of February 16, with regard to the concessions from tariff allowed by your company on shipments of hard coal and coke from Suspension Bridge and Buffalo.

"About a year since, I wrote to the Interstate Commerce Commission, asking for a decision as to whether traffic originating at the American Frontier, consigned to points in Canada, was subject to the provisions of the Interstate Commerce Act, and received reply from the Commission that it would so hold.

"In this case the situation is simply this: Your company and this agreed upon the tariff from Buffalo and Suspension Bridge to common points in Canada. We found after a period that certain dealers at certain points where our systems come in competition, had been allowed by your company concessions, and dealers by our line at once set up the claim that they must receive a similar consideration. I do not think that the question as to whether a shipper sends a large amount or a small amount, or whether he has his own terminals, or uses those of the railroad company for unloading the freight, would in any way be construed by the Interstate Commission as entitling your company to give to largest shippers, or those who own their own terminals, lower rates than you do similar shippers not so circumstanced. At any rate, if your construction of the law is correct it should be

known, as then the whole question of rates to be charged would turn upon the relative amounts of shipments, and the relative facilities for taking care of the same.

"This company certainly cannot consent to the system you have established in Canada, of paying rebates on this traffic, being continued, no matter what the circumstances are, unless it shall be shown that payment of such rebates is, under the provisions of the Interstate Commerce Act, proper. Our counsel holds that it is not. We have the ruling of the Commission, as I have before stated, that this traffic is subject to the provisions of that Act.

"It is, therefore, my purpose, with your consent to simply lay the matter before the Commission, and if necessary, make a friendly complaint against your company, in order to obtain a ruling as to whether the views of your counsel or of ours are correct. If you prefer, and it can be done, the best way might be to send a copy of your letter, with the papers I have, to the Commission, asking them to make a ruling thereon. Should they decline to do so, then the friendly complaint will probably be admitted.

"While you state in your letter that the 75-cent special rate is not concealed, yet I would call your attention to the fact that the tariffs of your company, of which I have several, publish a rate of \$1.00, and that so far as the public is concerned, that must be the governing rate. I do not believe that any carrier is authorized to carry at a rate less than that named in its tariff.

"Yours truly,

(Signed)

"H. B. LEDYARD,
"President."

This was answered by Mr. Hickson on the 6th of March as follows :

"MONTREAL, *March* 6, 1889.

"MY DEAR SIR: A pressure of engagements connected with legislation pending at Ottawa has prevented me replying earlier to your letter of the 21st ult.

"I really do not see that anything would be gained by bringing the matter of the rates for coal coming into Canada,

before the Interstate Commissioners. Of course if you have determined to do so it is probable that anything I may say on the subject will not change your decision.

"The shippers practically arrange for the rates for coal up to the Canadian boundary, and what they pay to the United States Railway Companies we do not know, and have not thought it necessary to enquire.

"If the fact that the coal is hauled across the International Bridges by the Grand Trunk Railway Company constitutes it international traffic, and subject to the cognizance of the Interstate Commissioners, I think it is quite certain that the shippers would arrange to have the work of taking the coal over the bridges done for them by the United States Companies. The Royal Commission, which recently reported upon the railway rates, etc., in Canada, recommended that it should be permissible to make a concession where large quantities of traffic were moved.

"As a matter of courtesy the tariffs for this coal traffic were sent to the Interstate Commission, but we were advised that it was really not obligatory upon the Company to forward them.

"Have the reductions in rates really affected the business of your Company? I am advised that they have been made at points in the traffic of which you are not interested. To common points I agree with you that the rates should be agreed and adhered to.

"Would it not be the most sensible way of putting matters upon a satisfactory footing that your officers should meet ours and agree upon a tariff to common points, *i. e.*, if there is really any difference in the rates prevailing by your line and ours for traffic in which both companies are interested?

"Yours truly,

(Signed)

"J. HICKSON,

"General Manager.

"H. B. LEDYARD, Esq., *Detroit.*"

The leading fact that appears by this correspondence is that the Grand Trunk Railway carries coal from points in the United States to points in Canada at less than its pub-

lished tariff rates; and claims the right to do so on two grounds: first, that its Canadian line is not subject to the Act to regulate commerce, nor to the jurisdiction of the Interstate Commerce Commission, and, second, that the circumstances and conditions of the traffic are different in the cases in which the rebate is allowed by reason of the consignees in those cases having certain facilities for unloading cars, that are not possessed by smaller shippers.

In addition to its Canadian lines proper, the Grand Trunk Railway Company controls and operates several important lines of railroad within the United States, which have an extensive business and yield a large revenue.

By the official reports filed with the Commission, and showing the operations of these various lines to the 30th day of June, 1888, the following facts appear, the corporate names of the subordinate roads being given, and the capital stated including stock, bonds and floating indebtedness:

The Atlantic & St. Lawrence Railroad Company, extending from Portland, Maine, through New Hampshire and Vermont, to the national boundary; mileage, 166.58; capital, \$8,443,000; gross earnings from operation, \$1,107,764.77; total freight tonnage, 836,152.

The Detroit, Grand Haven & Milwaukee Railway Company, extending from Detroit to Grand Haven, in the State of Michigan; mileage, 189; capital, \$6,995,347.92; gross earnings from operation, \$1,148,316.70; total freight tonnage, 618,012.

The Chicago & Grand Trunk Railway Company, including two short terminal lines to enter Chicago, extending from Port Huron, Michigan, through Indiana, to Chicago, Illinois; mileage, 335.27; capital, \$22,601,316.83; gross earnings, \$3,487,589.08; total freight tonnage, 1,540,659.

The Lewiston & Auburn Railway Company, extending from Lewiston, Maine, to Lewiston Junction; mileage, 5.41; capital, \$300,000; gross earnings, \$35,685.22; total freight tonnage, 53,536.

The Michigan Air Line Railway Company, extending from Lennox to Jackson, Michigan; mileage, 105.59; capital,

\$1,808,666.67; gross earnings, \$169,176; total freight tonnage, 262,791.

The Chicago, Detroit & Canada Grand Trunk Junction Railway Company, extending from Detroit Junction to Fort Gratiot, Michigan; mileage, 59.37; capital, \$2,881,141.46; gross earnings, \$248,123.52; total freight tonnage, 375,904.

The Toledo, Saginaw & Muskegon Railway Company, extending from Muskegon, to Ashley, Michigan; mileage, 96; capital, \$3,248,000; earnings and tonnage not reported.

The totals of these statistics are as follows:

Mileage, 857.22; capital, \$46,277,472.88; gross earnings, \$6,196,655.29; tonnage, 3,687,054.

Besides these lines, which are directly controlled and operated by the Grand Trunk Railway Company, that company has traffic connections with a large number of domestic lines reaching various portions of the United States.

These statistics do not embrace any of the business of the Grand Trunk Railway over the International Bridge near Niagara, nor at certain other points where traffic crosses the boundary, to wit: Rouse's Point, where it has a road into the United States about two miles in length; at Mooer's Junction, where it has a road into the United States about three miles in length, and at Fort Covington, where it has a road into the United States about one mile in length.

There are no reports filed with the Commission showing the international business at these points, nor do the statistics given embrace any international business of the Canadian Pacific Railway Company.

The Michigan Central Railroad Company, a corporation within the United States, is the lessee of a line in Canada, the Canada Southern Road, which runs from Detroit to Buffalo through Canada, and is also engaged as a competitor of the Grand Trunk Railway in the transportation of coal from the United States to points in Canada. The Michigan Central Railroad Company also publishes and files with the Commission its tariffs on coal and coke from Buffalo, Black Rock, and Suspension Bridge, in the United States, to divers points in the Dominion of Canada.

The counsel for the Grand Trunk Railway, in opening the discussion, stated the action of the company he represented as follows:

"I desire in making this presentation of the question that the facts as they exist should appear, and therefore I put it in this precise form. The schedule of rates as published and filed is adhered to in all cases except where an arrangement is made with the receiver of coal in Canada, and in such cases the rate covers the carriage in Canada and the toll for taking the load over the bridge at the border."

In answer to questions by the Commission he further said that the rate is a total rate, and is made at one gross sum from a point in this country to a point in Canada.

He also added:

"The Grand Trunk Railway Company receives the goods on the American side of the bridge, they then transport them across the bridge to the point of destination in Canada at a gross rate, say seventy-five cents, out of which the Grand Trunk Railway Company pays the toll to the Bridge Company."

The bridge toll was stated to be a certain charge per car.

The tolls, however, mainly, if not all, go to the Grand Trunk Railway, as is shown by the reports of that Company.

Upon the documents filed with the Commission in this proceeding, also the tariffs filed with the Commission by the Grand Trunk Railway Company, and upon the statements made by the counsel for said railway company on the hearing, the Commission finds specifically the following facts:

1. That the Grand Trunk Railway Company of Canada, an incorporated railway company of the Dominion of Canada, doing international business with connecting railway lines of the United States, is, and since a period of time prior to the 15th day of October, 1888, has been engaged in the transportation of property for a continuous carriage or shipment from points within the United States to points within the Domin-

ion of Canada. In this case the property transported was anthracite coal.

2. That the said Grand Trunk Railway Company, for the purposes of such transportation, publishes and files with the Commission tariffs of its rates and charges from points in the United States to points in the Dominion of Canada.

That such a tariff was filed with this Commission on the 20th day of October, 1888, which tariff sets forth in print as follows :

“L. X. Cancelling Tariff L. X. 1, of July 2, 1888. Grand Trunk Railway. Special Tariff on coal and coke, in car-loads of not less than 24,000 pounds each. From Buffalo (River Street), Black Rock and Suspension Bridge. Entirely at owner's risk of loss or shortage. Exclusive of customs charges. Taking effect October 15, 1888.”

The tariff then gives the rates on coal and coke to a large number of points in Canada, among them Hamilton and Dundas, to which the rate named is one dollar a ton, and Chatham, to which the rate named is one dollar twenty-five cents a ton.

3. That the said Grand Trunk Railway Company, since the said 15th day of October, 1888, has not maintained or adhered to its said published tariff rates and charges for the transportation of anthracite coal from the points named in the United States to the points named in the Dominion of Canada, but without changing its tariff as published and filed has transported coal from said points in the United States to points in the Dominion of Canada, at less than said published tariff rates, that is to say, to Hamilton, in the Province of Ontario, at the rate of seventy-five cents a ton, inclusive of the tolls for crossing Suspension Bridge.

4. That the transportation of coal as aforesaid by said Grand Trunk Railway Company at such reduced rates was in violation of the published schedule of rates and charges in force at the time.

APPLICATION OF THE LAW TO THE CASE.

The position of the Grand Trunk Railway Company in respect to the traffic under consideration was concisely stated as follows: "We contend that a shipment from a place in the United States to a place in Canada is not within the Act."

A further point in the nature of an objection to any action by the Commission was also made, as follows: "I make the point at the outset that there is no American corporation, or any corporation within the cognizance of this Commission, or within its jurisdiction, that can in any way be injured by the acts here complained of; and it seems to me that this is sufficient reason why this Commission should not take further cognizance of this case."

The claim is distinctly made, therefore, that a foreign carrier, either by itself or in connection with a domestic carrier, may carry freight on a through rate from any place in the United States to any place in Canada independently of the provisions of the Act to regulate commerce, and give such rebates or preferences, and discriminate in its traffic charges in such manner as it may see fit, with impunity.

The argument upon which this claim is founded is in substance that the Act omits to provide for traffic carried into an adjacent foreign country, and by its terms only applies to the boundary line. This construction, it was conceded, "standing alone would perhaps be very narrow and technical," but taken in connection with other portions of the first section of the Act was claimed to be the only construction which is at all permissible.

The positions so broadly taken demand some inquiry whether the transportation in question is subject to the provisions of the Act.

It is fair to assume that in framing a law to regulate commerce the intention of Congress was that all transportation by the carrying agencies described in the Act should be subject to the regulations prescribed, and that the subjection should be such as to render the Act effective for its declared purposes.

The power of Congress to regulate the transportation of property by continuous carriage or shipment from any place in the United States to a place of destination in an adjacent foreign country it is not the province of the Commission to question. Its function is to give effect to the law as declared, and with a reasonable interpretation of its language.

If any questions relating to rights of sovereignty are involved, or that are governmental in their character, they may be dealt with in a spirit of justice by treaty stipulations, or by appropriate legislation on the part of the respective Governments.

It may be observed, however, that the power of Congress to levy import and export duties is not questioned. And the power to regulate commerce among the States and with foreign nations, including all the elements and agencies implied in the term, is equally clear. Commerce, as has been often declared by the courts, embraces transportation, traffic, intercourse, and navigation. Transportation has been said to be an essential element of commerce (15 Wall., 232; 18 Fed. Rep., 151), including transportation of freight and passengers between the States, or with foreign countries; (*Lord v. Steamship Co.*, 102 U. S., 541). And commerce with foreign nations signifies transactions which at some stage of their progress must be extra-territorial; (*Same case*, 544).

An examination of the Act can leave no reasonable doubt of the intention of Congress. It purports by its title "to regulate commerce." This, as has been shown, includes traffic, transportation, and the instrumentalities employed. By the first section the provisions of the Act are declared to apply "to any common carrier or carriers engaged in the transportation of passengers or property wholly by railroad, or partly by railroad and partly by water when both are used, under a common control, management, or arrangement, for a continuous carriage or shipment, from one State or Territory . . . to any other State or Territory, . . . or from any place in the United States to an adjacent foreign country, or from any place in the United States through a foreign country to any other place in the United States."

It will be observed that the word "to" in these three sepa-

rately described kinds of transportation is used to express the destination of the property by continuous carriage. It is declared to be *to* another State or Territory, or *to* an adjacent foreign country, or *to* another place in the United States. In what sense is the word "to" used in these sentences? The answer given by the Grand Trunk Railway is that it signifies at the boundary line of another State or Territory, or of an adjacent foreign country, or of another place in the United States. This construction is, however, obviously so "very narrow and technical," when applied to commerce among the States, as to render the law nugatory, and a broader meaning therefore was necessarily intended. It is an elementary rule that when a word is used in an instrument, whether a statute or a private document, which is susceptible of different interpretations, that is to be adopted which will give effect to the evident intent of the instrument taken as a whole. An elaborate system of regulation of commerce from one State to another, that becomes inoperative at the State line, would fail so entirely to accomplish any useful purpose that practically there would be no regulation. The word "to," therefore, in this instance means the destination of the property into, or at any place within the State reached by the continuous carriage or shipment, and the regulation intended is from the origin to the destination of the carriage.

If the sentence referring to commerce among the States necessarily has this meaning, there is no reason for supposing that the next sentence, which refers to transportation to an adjacent foreign country, has a more restricted meaning. The same word must, by familiar rules of interpretation, be presumed to be used in the same sense when repeated in a similar connection in the same paragraph of a statute, and in relation to the same general subject. All the reasons that apply in the first instance for making the regulation effective also apply in this case. *To* an adjacent foreign country, therefore, signifies any destination in an adjacent foreign country to which the continuous carriage extends.

This view is strengthened by the next sentence in the same paragraph, which applies the provisions of the Act "also to

the transportation in like manner (that is, continuous carriage) of property shipped from any place in the United States to a foreign country and carried from such place to a port of trans-shipment, or shipped from a foreign country to any place in the United States and carried to such place from a port of entry either in the United States *or an adjacent foreign country.*" This clause clearly provides for carriage partly in the United States and partly in an adjacent foreign country, either to a port of trans-shipment or from a port of entry.

The proviso immediately following the clause last cited furnishes further confirmation. It declares "That the provisions of this Act shall not apply to the transportation of passengers or property . . . wholly within one State, *and not shipped to or from a foreign country from or to any State or Territory as aforesaid.*" The Act applies, therefore, to the transportation of property wholly within one State when shipped to or from a foreign country.

The word "to" is evidently employed in the descriptive sentences of the first section in accordance with ordinary usage, as when a person speaks of going to some city, or to some other country. He does not mean only to the boundary line, but into the city or country. A like usage is also found in statutes, as in grants of railroad charters, which frequently describe the line of road to be from some town to some other town, and no one has doubted that its termini under such language might be in any portion of the towns named where rights of way might be procured.

Evidence of the intention of the Act in this respect that seems to be conclusive is found in the sixth section. The intention is to be deduced from the entire Act, and not from only one clause. The sixth section relates to the filing and publication of tariffs, and their observance by the carriers and for the transportation described in the first section. It is therefore explanatory of the first section. It provides, among other things, as follows:

"That every common carrier subject to the provisions of this Act shall print and keep open to public inspection

schedules showing the rates and fares and charges for the transportation of passengers and property which any such common carrier has established and which are in force at the time upon its route. The schedules printed as aforesaid by any such common carrier shall plainly state the places upon its railroad between which property and passengers will be carried, and shall contain the classification of freight in force, and shall also state separately the terminal charges and any rules or regulations which in anywise change, affect, or determine any part or the aggregate of such aforesaid rates and fares and charges."

Another provision is as follows:

"Any common carrier subject to the provisions of this Act receiving freight in the United States to be carried through a foreign country to any place in the United States shall also in like manner print and keep open to public inspection, at every depot or office where such freight is received for shipment, schedules showing the through rates established and charged by such common carrier to all points in the United States beyond the foreign country to which it accepts freight for shipment; and any freight shipped from the United States through a foreign country into the United States, the through rate on which shall not have been made public as required by this Act, shall, before it is admitted into the United States from said foreign country, be subject to customs duties as if said freight were of foreign production; and any law in conflict with this section is hereby repealed."

It is further provided that:

"When any such common carrier shall have established and published its rates, fares, and charges, in compliance with the provisions of this section, it shall be unlawful for such common carrier to charge, demand, collect, or receive from any person or persons a greater or less compensation for the transportation of passengers or property, or for any services in connection therewith, than is specified in such published schedule of rates, fares, and charges as may at the time be in force."

Provisions relating to joint tariffs are then found, after which it is enacted as follows :

“If any such common carrier shall neglect or refuse to file or publish its schedules or tariffs of rates, fares, and charges as provided in this section, or any part of the same, such common carrier shall, in addition to other penalties herein prescribed, be subject to a writ of mandamus, to be issued by any circuit court of the United States in the judicial district wherein the principal office of said common carrier is situated, or wherein such offense may be committed, *and if such common carrier be a foreign corporation* in the judicial circuit wherein such common carrier accepts traffic and has an agent to perform such service, to compel compliance with the aforesaid provisions of this section; and such writ shall issue in the name of the people of the United States, at the relation of the Commissioners appointed under the provisions of this Act; and the failure to comply with its requirements shall be punishable as and for a contempt; and the said Commissioners, as complainants, may also apply, in any such circuit court of the United States, for a writ of injunction against such common carrier, to restrain such common carrier from *receiving or transporting property among the several States and Territories of the United States, or between the United States and adjacent foreign countries, or between ports of trans-shipment and of entry and the several States and Territories of the United States, as mentioned in the first section of this Act, until such common carrier shall have complied with the aforesaid provisions of this section of this Act.*”

The designation of foreign corporations among the common carriers to be proceeded against for disobedience to the law, and the remedy by injunction to restrain a derelict common carrier from receiving or transporting property among the several States and Territories of the United States, and *between the United States and adjacent foreign countries, or between ports of trans-shipment and entry and the several States and Territories*—such ports of trans-shipment or of

entry being, as mentioned in the first section, either in the United States or an adjacent foreign country—indicate very clearly the scope of the application of the Act both as to carriers and traffic, and that the carriage of property into, and out of, as well as through adjacent foreign countries is designed to be subject to its provisions. Whenever the carriage originates in the United States and goes to a destination in an adjacent foreign country, or comes from a port of entry or other place in an adjacent foreign country to a destination at a place in the United States, it is intended to be subject to the provisions of the Act. Its origin in the one case and its destination in the other within the jurisdiction of the United States, give authority to the Government to prescribe such conditions for the conduct of the business as it may deem just. The carriage is of property produced in or destined to the territorial sovereignty of the United States, and the business is in competition with domestic carriers. The Government has the right, and owes it to its own citizens to say, that foreign competitors in the business shall be governed by the same rules of justice and fair dealing that apply to domestic carriers. This is not, as argued by counsel, an attempt to regulate the internal affairs or to antagonize the laws of another country, but, on the contrary, is the assertion of proper control over our own business, and the protection of our own citizens against unfair practices which unjustly affect their interests.

Nor is the object the protection of subjects of another Government against unjust discriminations and unreasonable prejudice. That is the concern of the Government to which they owe allegiance. The object is, that the foreign transportation agencies that find it profitable to seek business within our jurisdiction shall not abuse their privileges to the injury of the carriers whose legitimate territory they penetrate. It is expected that in return for the hospitality of entering our domain for business purposes, enjoying the protection of our laws, maintaining agencies, soliciting business, making contracts, receiving and discharging freight, and participating generally in the operations of commerce, they will observe in good faith the rules of commercial honesty that

the law has prescribed in the public interests as expedient for the regulation of the business.

Independently of legal obligation, comity alone demands as a just recognition of liberal commercial advantages and extensive vested interests in the United States from which a large revenue is derived, that the laws of the friendly country under which these privileges are permitted, intended for the equal protection and regulation of these interests and similar domestic interests, should be scrupulously obeyed.

The vested interests of the respondent in the United States include a railroad mileage of 857 miles, representing a capital of \$46,277,472.88, with a business for the last fiscal year of 3,687,054 tons of freight, and a gross revenue of \$6,196,655.29.

The question in the case, however, rests on formal enactments of law, and not merely on obligations of comity. Considerations of that nature may be fairly assumed to add weighty reasons for compliance with the mandates of the law. But the duty of compliance is imperative under the law. And the acceptance of benefits under statutes that impose duties, is also an acceptance of the correlative obligations imposed.

A further provision to prevent any device or artifice to defeat the purpose of the law is contained in the seventh section, which is as follows:

“That it shall be unlawful for any common carrier subject to the provisions of this Act to enter into any combination, contract, or agreement, expressed or implied, to prevent, by change of time schedule, carriage in different cars, or by other means or devices, the carriage of freights from being continuous from the place of shipment to the place of destination; and no break of bulk, stoppage, or interruption made by such common carrier shall prevent the carriage of freights from being and being treated as one continuous carriage from the place of shipment to the place of destination, unless such break, stoppage or interruption was made in good faith for some necessary purpose, and without any intent to avoid or unnecessarily interrupt such continuous carriage or to evade any of the provisions of the Act.”

The whole question resolves itself within a narrow compass. The law interposes no obstructions to transportation by foreign carriers from or into the United States, but requires them in conducting the business to conform to the same regulations that govern domestic carriers. This is the sole condition. The foreign carriers say they intend to participate in the business, but reject the condition, and claim that because they are aliens they have immunity from the law. The Act, however, says that unless they comply with the law they may be prohibited by the Courts from receiving or transporting property between the United States and adjacent foreign countries, or between ports of trans-shipment and of entry and the several States and Territories of the United States.

If the contention of the respondent can be sustained the law is only a contrivance to injure domestic carriers, and to divert most of the export and import business of the United States, and the international business with Canada to foreign transportation lines. Under the construction claimed property from any place in the United States destined to a place in Canada, or to a Canadian port of trans-shipment for export, would be exempt from the provisions of the law, and concessions in the form of rebates, as upon the coal transportation in question, could be made, that would offer inducements to invite the business, and give substantial advantages to foreign purchasers. The same rule would apply to imported traffic destined to a place in the United States either on through bills or consigned locally from a place in Canada, and under such conditions the demoralization of trade and transportation that would inevitably follow are entirely evident. The general effect, therefore, of the construction claimed by the respondent would be that this carrier, on freight it takes from or brings into the United States could practice unjust discrimination of the grossest character against localities in the United States not greatly distant from the boundary line, and in favor of localities or persons in Canada.

The question is therefore one of supreme importance, and no presumption is to be indulged that Congress designedly omitted the commerce in question from the regulations of

the Act, or overlooked the consequences of such omission. The careful language of the Act affords no reasonable support for the exemption claimed, but decisively negatives the theory.

The Commission is of opinion therefore that the provisions of the Act to regulate commerce apply to the transportation in question, and that the carriers engaged in it are subject to its regulations. They are required to publish their tariffs and to maintain the published rates shown by the tariffs in effect.

The minor question raised by the respondent that no domestic carrier or other complainant makes proof of specific injury from its disregard of statutory duty, and that without such proof the Commission should not interfere, calls for no extended discussion. This position, if sustained, would make some of the most important provisions of the statute of little or no importance. Would a claim be well founded that no one shall complain of the failure to post rates unless he can show damage therefrom to himself? Or of the failure to notify an advance or reduction in rates? Or of any other violation of law when from the very nature of the case the mischief is general rather than particular?

Very clearly a doctrine so damaging to the efficiency of the law is not to be sanctioned. It is quite possible that a discrimination in charges might be made upon traffic from the United States delivered in Canada that would inflict no appreciable wrong upon any citizen of this country; but it would nevertheless be a public wrong, for it would introduce demoralization into traffic by rail, and invite and encourage other wrongs that are denounced and prohibited by the law. Probably the belief that there might be cases where no one on his own account would be inclined to complain, or have a direct interest in doing so, was one of the reasons that authority to institute investigations independently was conferred upon the Commission.

Neither a formal complaint, nor direct damage to a complainant is necessary to give jurisdiction to the Commission. By the twelfth section of the Act it has authority to inquire into the management of the business of all common carriers

subject to its provisions, and is required to keep itself informed as to the manner and method in which the same is conducted. The Commission is further authorized and required to execute and enforce the provisions of the Act.

The thirteenth section provides that the Commission "may institute any inquiry on its own motion in the same manner and to the same effect as though complaint had been made."

The same section further provides that "No complaint shall at any time be dismissed because of the absence of direct damage to the complainant."

Information lodged with the Commission, therefore, of a violation of the Act, as in this case, is sufficient to authorize proceedings to be taken. The statute confers jurisdiction, with or without a complainant who has sustained damage, both to ascertain whether its provisions have been violated, and to deal with actual violations.

CONCLUSIONS.

The conclusion of the Commission is that the Grand Trunk Railway Company of Canada, by reason of the facts hereinbefore found, that is to say, at divers times between the 15th day of October, 1888, and the 26th day of March, 1889, by charging and collecting less than its established and published rates and charges for the transportation of coal from Buffalo, Black Rock and Suspension Bridge, in the State of New York and within the United States, to the city of Hamilton and other points in the Dominion of Canada, has violated the sixth section of the Act to regulate commerce.

The Commission therefore orders that the said Grand Trunk Railway Company be notified to cease and desist from such violation immediately upon the service of such notice.

WILLIAM H. HEARD, PETITIONER, v. THE GEORGIA
RAILROAD COMPANY, DEFENDANT.

Argued and submitted April 10th, 1889. Decided May 8th, 1889.

1. It is a lawful duty that a carrier, like the defendant, owes to the traveling public in carrying out its rule of furnishing separate cars to white and colored passengers on its line engaged in interstate travel, to make them equal in comforts, accommodation and equipment without any discrimination.
2. It is a lawful duty which a carrier, like the defendant, owes to the traveling public engaged in interstate travel over its line, to afford the equal protection of the law alike to all such passengers without regard to race, color, or sex, against undue prejudice and disadvantage from disorderly conduct on the part of other passengers or persons.
3. On the facts in this proceeding, *Held*, that the defendant violated the law in each of the foregoing respects as against petitioner.

Mr. *John W. Cromwell* and Mr. *William C. Martin*, counsel for petitioner.

Mr. *Joseph B. Cumming*, for defendant.

REPORT AND OPINION OF THE COMMISSION.

BRAGG, *Commissioner*:

The conceded facts in this case are that on the 25th day of January, 1889, at Philadelphia, in the State of Pennsylvania, the petitioner purchased a first-class ticket from Philadelphia to Atlanta, Georgia, by way of Augusta, in the State of Georgia, for which he paid \$21.50. On this ticket he made his journey as far as Augusta, Georgia.

At Augusta he was required by those in charge of the train and against his protest to go into a compartment, or half car, of the defendant, in a train composed in the order named, of an engine, tender, mail car, baggage and express car, compartment above named, and a passenger car which was not a compartment car. The car in the rear was for white passengers and was numbered 13. The car next in front of it was numbered 30 and was a compartment car with a partition in the middle of the car extending solidly from the floor to the ceiling, dividing the car into two equal compartments with

thirteen seats in each compartment. There was a door in this partition through which persons could pass at will from one compartment into the other. The rear compartment of the car, on this occasion, was used as a smoking car and was occupied by passengers who were men, and who were both white and colored. The front compartment was occupied by colored passengers, men and women, and in this compartment there was a notice on a card posted, in these words: "This car is for colored folks."

The complaint avers that this car, No. 30, into which petitioner was required to go by the train officers of defendant, against his protest, was dirty, poorly appointed, was one-half of a smoking car, was constantly filled with tobacco smoke, and was second class in every particular to the coach in which white passengers traveled, No. 13. The answer, in substance, asserts that this compartment into which petitioner was required to go was a car in point of accommodations equal to car No. 13. The issue, therefore, in this proceeding, is whether this compartment car, in which petitioner was required to travel as a passenger, was of the kind he has described in his complaint, in consequence of which he was subjected to undue prejudice or disadvantage, or whether, on the other hand, it was a car such as he was entitled to travel in upon the ticket he held. There is no claim made by the complaint for damages or reparation of a pecuniary character.

The evidence in this proceeding shows that this train was to run over the main line of the Georgia Railroad from the city of Augusta to Atlanta, a distance of 171 miles, and was one of its chief daily trains on this route, and was the mail train, for it was both a mail and express train. It was a day train and occupied between six and seven hours in the run from Augusta to Atlanta. The two passenger cars, No. 13 and No. 30, respectively, are scoured and cleaned by the same servants of the company at each terminus, after the train has made each journey.

The car No. 13 is a comparatively new car; it was turned

out from the workshop in September, 1888, and was placed in service on the 8th day of October following. It has what is called a Baker heater for heating the car, a new and improved invention that has come into use within the last few years, and superior in point of comfort to the ordinary car stove. At opposite ends of this car there are two closets, one designated "For Ladies," the other designated "For Gentlemen." The aisle of this car is covered by a carpet, and the plush with which the seats are upholstered is old gold in color.

The car No. 30 is not an old car except relatively to car No. 13, and a few others that are fresh from the workshops. Its age is not shown by the evidence, but we take this description of it as given by the general manager in his testimony. It was thoroughly renovated in June, 1888, and was placed in service the following month; the aisle of this car is covered with cocoa matting, and the plush with which the seats are covered is crimson in color. This car is heated by an ordinary car stove. There is one closet in each of the compartments of this car; the closet in the compartment set apart for colored people may be used by persons of both sexes; or the closet in the smoking compartment may be used by men from both compartments, leaving the closet in the compartment set apart for colored people to be used by colored women alone. The stove is placed in the corner of the compartment for colored passengers. In making the run from Augusta to Atlanta, the compartment occupied by colored passengers is the compartment used as a smoking room on the previous trip of the train from Atlanta to Augusta; by this, the colored passengers are reversed from one compartment to the other on each trip of the train; the smoking compartment on one trip being the compartment for colored passengers on the next trip.

Although no averment is made in the complaint, that petitioner was put to any discomfort or suffered undue prejudice for want of protection against disorderly conduct in the compartment to which he was assigned, yet, as bearing upon the question whether such compartment was, as averred in his

complaint, "dirty, poorly appointed . . . and second class in every particular to the coach in which white passengers rode, No. 13," and whether he suffered any undue prejudice or disadvantage therefrom, and also because it seemed to be in itself a substantive violation of the statute, the Commission heard evidence, against the objection of the defendant, as to the conduct of the conductor of the train, and passengers from the smoking compartment, as exhibited in the compartment in which petitioner and other passengers, who were persons of his race, were placed by the officers of the train. From this evidence it appears that two white men, who were passengers in the smoking compartment, came several times into the compartment where petitioner was a passenger, and drank whiskey repeatedly out of a tin cup at the water tank, which cup had been placed there by the railroad company for passengers to use in drinking water out of the tank; and that on at least one of these occasions the conductor of the train drank whiskey with them. The petitioner protested to the conductor against this, but these two men came into the compartment where petitioner and the other passengers were, and took a drink of whiskey about every half hour while the train was running from Augusta to Union Point, a distance of 76 miles. This conduct of the conductor was in violation of the rules of the company and was so known to be by the petitioner. There were several colored women, passengers in the compartment with petitioner, who, according to the evidence, were decent women.

During the journey from Augusta to Atlanta the door between the two compartments was frequently open, arising from persons passing from one compartment into the other at will, in consequence of which there was much of the time about as much tobacco smoke in one compartment as in the other. The petitioner complained of this to the conductor, but it availed him nothing. The petitioner also complained to the conductor as to the unclean condition of the closet in the compartment in which petitioner was a passenger, and this complaint offended the conductor, and a quarrel took place between them, which is detailed in the evidence.

To negative the idea of unjust discrimination against petitioner, or of undue prejudice or disadvantage, evidence was introduced by the defendant that on this same line of its road on each of its parlor cars a smoking room existed, with only a door between it and the body of the car, which in this respect was similar to the door between the smoking room and the compartment in which petitioner and the colored people were required to ride in the train on its main line; but the evidence shows that colored persons do not travel in these parlor cars. There was also evidence that the defendant always requires the compartment in which the colored people travel, and in which petitioner traveled in this instance on its main line, to be placed in front, and next to the mail car, so as to prevent tobacco smoke from getting into this compartment from the smoking room. There was also evidence that on some of its branch roads the defendant used compartment cars entirely for passengers, the white people occupying one compartment of a car and the colored people the other, while a portion of the baggage car was used as a smoking car.

The evidence shows that there is largely more travel of white passengers over defendant's line than there is of colored persons. Still, the travel of colored passengers over its line is very considerable. The defendant resorts to the method of a compartment of a car for colored passengers on the grounds of economy, because it usually furnishes sufficient space for them, but whenever they travel in sufficient numbers defendant furnishes them an entire car. The defendant also relies upon the decision of the Honorable Railroad Commission of the State of Georgia, made in the case of *Gaines v. Defendant*, within the last year, as to the character and condition of cars it furnishes for colored passengers. The defendant sells none but first-class tickets on this passenger train over its main line.

Evidence was offered as to the accommodations on branch lines in defendant's system, assailing its methods in respect to these, but as these were short State roads, and the evi-

dence did not show that they were engaged in interstate commerce, and they were not mentioned in the complaint, we could not consider such evidence as having any bearing upon this complaint, which relates to what these accommodations were at a particular time and upon a train named in the complaint upon a different line.

The foregoing embodies in substance the material evidence in this proceeding.

The Commission has carefully considered all the evidence adduced in this proceeding, as well as the arguments of counsel, and in compliance with the statute now states its findings of fact, which are,

First. That in the month of January, in the year 1889, at the city of Augusta, in the State of Georgia, the petitioner, William H. Heard, was then and there subjected to undue prejudice and disadvantage by the defendant, the Georgia Railroad Company, being then and there a common carrier of passengers for hire, and as such engaged in interstate traffic, in violation of the Act to regulate commerce approved February 4, 1887, in this, that said William H. Heard, being then and there the holder of a first-class ticket, for which he had paid value received, and which entitled him to travel as a passenger engaged in interstate travel on defendant's train in a car having first-class accommodations and comforts over defendant's line from the said city of Augusta to the said city of Atlanta, in the State of Georgia, was then and there required by the defendant, against his protest, to travel as such passenger in a car inferior in comforts and accommodations to what he was entitled to have had under and by virtue of his ticket purchased and held by him as aforesaid.

Second. That in the month of January, in the year 1889, on its main line between the cities of Augusta and Atlanta, in the State of Georgia, the said defendant being then and there a common carrier of persons for hire and engaged in interstate traffic, as aforesaid, did then and there, in disregard of its duty as a common carrier engaged in interstate com-

merce, unlawfully suffer the said William H. Heard, a passenger in one of its cars, together with other persons of his race—namely, colored persons, men and women—to be subjected to undue prejudice and disadvantage in this, that the defendant did then and there permit other passengers from a smoking compartment on its said train to intrude themselves into the adjoining compartment in which said William H. Heard was a passenger, and the other persons of his race were passengers, and to be guilty of disorderly conduct in then and there repeatedly drinking whiskey out of a certain tin cup placed at the tank in said last-named compartment by defendant for said William H. Heard, and said other persons of his race, to use as passengers, in drinking water out of said tank, all of which was against the protest of said William H. Heard, and in violation of the Act to regulate commerce approved February 4, 1887.

Third. That it is a lawful duty which the defendant owes to the traveling public in carrying out its rule of furnishing separate cars to white and colored passengers on its line, engaged in interstate travel, to make them equal in comforts, accommodation, and equipment, without any discrimination where the same price is charged.

Fourth. That it is a lawful duty which the defendant owes to the traveling public over its line engaged in interstate travel, that its train officers should protect all such passengers without regard to race, color, or sex, against undue prejudice and disadvantage from disorderly conduct on the part of other passengers or persons.

The views held by the Commission in this proceeding, upon which its findings of facts are made as above set forth, may now be properly stated. The Commission is aware that there are occasionally embarrassments and difficulties arising to carriers in the transportation of persons of different race and social peculiarities and characteristics. These have been brought before us and have been duly considered in this and in two other cases. These embarrassments and difficulties, considerable as they may sometimes be found, are not more

so than others that have been occasionally developed in the solution of transportation problems, and should be met by carriers in a spirit of fair, reasonable and proper adjustment. The law, Federal and State, will not tolerate the doctrine any more in the transportation of persons than of property, that one class is to be favored by the carrier over another. This is as true of the statutes of the State of Georgia as it is of the Act to regulate commerce, for in section 4586 of the code of Georgia we find the following provision: "All common carriers of passengers for hire in this State shall furnish like and equal accommodations to all persons without distinction of race, color, or previous condition." The duty of the carrier, therefore, in this respect, is nowhere open to controversy.

When a complaint of the petitioner against the defendant, in many respects similar to this, was before the Interstate Commerce Commission, 1 I. C. C. Rep., p. 428, we found upon the facts before us that the defendant had unjustly discriminated against him, and in that case, on the 15th day of February, 1888, the Commission made the following order:

"Now it is ordered and adjudged that the defendant, the Georgia Railroad Company, do cease and desist from subjecting colored passengers to undue and unreasonable prejudice and disadvantage in violation of the third section of the Act to regulate commerce, and that so long as its rule separating passengers is maintained, its duty is to furnish for all passengers paying the same fare, cars in all respects equal and provided with the same comforts, accommodations and protection for travelers.

"And it is further ordered that a notice embodying this order be forthwith sent to the defendant corporation, together with a copy of the report and opinion of the Commission, in conformity with the provisions of the 15th section of the Act to regulate commerce."

The language of that order appeared to us to be plain and explicit. It appears from the testimony of its general manager, in this case, that the defendant "earnestly intends and

endeavors to comply with the law and to furnish equal and like accommodations to white and colored passengers." That in this it has failed in this instance, as appears from the evidence in this proceeding, is no reason why it may not and should not the more promptly now comply with the law.

Where a compartment of a car is used on one trip as a smoking car by persons who chew tobacco and smoke and expectorate tobacco juice on the floor, and saturate the seats, wall and ceiling with the odors and fumes of tobacco, the cleaning and scouring of that car at the terminus, and then turning it over to passengers to travel in on the next trip of the car, it may be the next day, who hold first-class tickets, can not be said to furnish these passengers the accommodations and comforts to which they are entitled on such tickets and for which they have paid their money. There is no place to which the saying of John Wesley that "Cleanliness is indeed next to Godliness," is perhaps more justly applicable for substantial comfort, than a passenger car in which persons are obliged to travel.

If, however, this compartment car was reversed on every different trip, so that the same compartment was always used as a smoking room, still the adjoining compartment, separated only by a door, necessarily open much of the time and in this way filling the other compartment frequently with the fumes and odors of tobacco smoke, would prevent it from being a first-class car in point of accommodations and comforts, into which a traveler should be forced, holding a first-class ticket. There are many persons to whom the fumes of tobacco are peculiarly sickening. The difference between enduring these for a few minutes in a hotel lobby or on the street in the open air, and having to sit under the influence of them for hours, in a long journey on a car in a railroad train, is very marked. There are also many persons who in traveling on cars are unavoidably subject to nauseous sensations like sea-sickness. Such sensations would be very greatly aggravated by the odors and fumes of tobacco. In England, by a very recent statute, all railway carriers are required to furnish a separate smoking room or compartment on all their passenger trains

for every class of passengers to whom they sell tickets; and in America it is the usual custom of railway carriers to have smoking rooms or compartments on their trains separated from the body of the cars in which the general public is traveling. Such an arrangement properly carried out and enforced by just regulations is necessary to the comfort of the traveling public. Whether the smoking compartment arrangements of the defendant in its parlor cars are such as to cause discomfort to the passengers in the body of those cars, there is no evidence—and these we have not investigated because they are not involved in this complaint, and therefore we make no report and express no opinion in regard to them. The evidence shows that colored persons do not travel in these parlor cars. They are cars of exceptional accommodations and higher fares are charged for travel in them than in ordinary passenger cars.

Without regard to the question of their cleanliness, the closet arrangements in car 30 are not what they should be. There should be one closet in that car distinctly designated for the use of women only; and the other should be designated for the use of men alone. In this respect this car is shown to be a very inferior car compared to car 13. There is positive evidence that on the occasion to which this complaint relates the closet in the compartment in which petitioner was required to travel was in an unclean condition; and opposed to this is only the general statement of the general manager that the rule of the company at each terminus was to have the cars cleaned and scoured by the same servants and that this was done. Positive and specific testimony as to the condition of the car at the particular time mentioned and maintaining under oath what, it is alleged, was stated to the conductor by the witness concerning its condition at the time to which this complaint relates, must, of course, as evidence, outweigh any mere general statement of the general manager that the rules of the company required the cars to be cleaned and scoured at each terminus by the same servants, and that this was done, without stating that the manager knew it was done and how it was done in this particular

instance. There is no evidence that the general manager saw the car that day or that he knew of his own knowledge its condition on this journey.

The evidence shows that as a rule there are largely more white passengers than colored passengers who travel on defendant's train, though the travel of colored people is very considerable. For this reason the defendant has a compartment car, being about half the car, usually for colored passengers, and when they are in sufficient numbers gives them an entire car. The defendant justified this method of doing its business on economic grounds and says that it is influenced solely by these considerations in making this arrangement. If, in doing this, the compartment of the car, or the car, as the case may be, is equal in safety of construction, comforts and accommodations, and the protection afforded to passengers to what is found in other cars in which white women and men travel on the same train, all holding first-class tickets, for which the same price is paid, then the law will not be violated. But the carrier must see to it that the comforts, accommodations and protection afforded in each instance, are substantially equal, or the law will be violated. One compartment or half of a passenger car should not be a smoking car while the other compartment or half of that car is used for passengers holding first-class tickets. The heating arrangements, whatever they may be, should be so arranged as to be substantially as comfortable in one car as in another where passengers pay the same fare.

The 15th section of the Act to regulate commerce makes it the duty of the Interstate Commerce Commission in every investigation in which "it shall be made to appear to the satisfaction of the Commission, either by the testimony of witnesses or other evidence, that anything has been done or omitted to be done in violation of the provisions of this Act, or of any other law cognizable by said Commission, by any common carrier, or that any injury or damage has been sustained by the party or parties complaining, or by other parties aggrieved in consequence of any such violation, it shall be the duty of the Commission to forthwith cause a copy of

its report in respect thereto to be delivered to such common carrier, together with a notice to said common carrier to cease and desist from such violation or to make reparation for the injury so found to have been done, or both, within a reasonable time to be specified by the Commission." We have held that this required us to report and act upon a violation of the statute discovered by evidence before us in an investigation, although it had not been the subject of complaint in the petition. (See Smith's Case, 1 I. C. C. Rep., p. 209.)

The mandate of the statute requires us to take notice of a violation of it not mentioned in the complaint, but developed in the evidence before us, and to correct it. The matter that we here refer to now is, that protection against undue prejudice or disadvantage which this statute requires the carrier to extend to all passengers alike on its trains as against the conduct of disorderly persons, and the failure to do which subjects them to undue prejudice and disadvantage.

The equality of comforts and accommodations which the law guarantees to passengers and requires the carrier to afford alike to all who pay the same fares, would amount to little if the carrier should neglect to perform the still more important duty, equally required by the statute, of extending to every passenger, without regard to the amount of fare paid, the safeguard of its equal protection against all disorderly conduct from other passengers and from all persons whatsoever. Regulations of the company looking to this end are commendable, but they amount to nothing unless enforced. The conductor is captain in command of the train and the chief representative of the railway company present, and to him every passenger has the right to look for this protection, and it is a duty required of him and of the railway company by the law that he should afford it. In the State of Georgia, conductors have police powers and authority on their trains. (Code of Georgia, section 4586.) But without regard to the special provision of that statute, the duties of this officer in protecting passengers from disorderly conduct, under his

general powers as conductor, by the common law have been repeatedly considered and defined by the courts of this country.

A leading case on this subject is that of the *Pittsburgh, Fort Wayne & Chicago Railway Company v. Hinds*, 53 Penn. State Rep., p. 512. There a number of unruly persons forced themselves into the car in which the plaintiff, who was a woman, was a passenger, and in the course of a fight among them, one of them was thrown upon the plaintiff with such violence that her arm was seriously injured. The Supreme Court of Pennsylvania said the negligence of the company or its officers in charge of the train was the gist of the action, and while it was not the duty of railroad companies to furnish their trains with a police force, they were bound to furnish men enough for the ordinary demands of transportation; and that if the conductor did not do all he could with the force he had upon the train, it was negligence. The court further said, in such cases the conductor should stop the train if necessary, and call to his assistance all its servants, and as many of the passengers as were willing to lend a helping hand, and that until he had done this and had put forth all the means at his disposal, he had no right to abandon the conflict. To keep his train moving and busy himself in collecting fares in one car whilst a fight was going on in another car was, as the court said, to fall short of his duty. He should not have been content with ordering the thing to be done. He should himself have led the way. And the court adds: "He should have stopped the train and hewed a passage through the intrusive mass until he had expelled the rioters, or had demonstrated by an earnest experiment that the undertaking was impossible."

Another is the case of the *Pittsburgh & Connellsville Railroad Company v. Pillow*, 76 Penn. State Rep., p. 513. The facts were, that in a fight upon a car among some drunken men, the conductor did not exert himself to suppress it as he should have done, and the plaintiff, a passenger who was not concerned in it, lost an eye. A verdict against the company was sustained. And the Supreme Court of Pennsylvania

say: "We cannot perceive the force of the argument of the counsel for the plaintiff in error, wherein he endeavors to raise a distinction between accidents arising from negligence in equipment or management of the train and those arising from the conduct of passengers upon it. If the employees of the train had no control over the passengers this argument would be sound. But they have such a power and they are just as responsible for its proper exercise as they are for the running of the train."

A case also of unusual interest in which these questions are fully considered and the authorities reviewed at length on common-law grounds, is that of *The New Orleans, St. Louis & Chicago Railroad Company v. Burk*, 53 Mississippi Reports, p. 200. The facts in that case were that several drunken and disorderly men on a train at night, repeatedly insulted a fellow-passenger, who did not resent their insults, and peaceably did all in his power to avoid them, and they then made a combined attack upon him, the conductor of the train being present when these acts occurred, and he protested against them, but made no determined effort to quell the disorder. When the fight began, and while it was raging, the conductor fled to the platform, carrying his lantern with him, leaving the combatants in darkness, and the assaulted passenger to his fate. The passenger assailed defended himself as best he could, and in doing so retreated to the platform where he found the conductor, who carried him to another car on the train, and for safety secreted him. In the fight one of his assailants fired a pistol at him, and he knocked down two of them with a hatchet, but escaped without serious personal injury. Some of them afterwards hunted for him through the train to renew the fight, but could not find him. He sued the company for damages, and there was a verdict in his favor against the company for six thousand dollars, which was sustained. The Supreme Court of Mississippi, reviewing the authorities, say: "If it be asked then what principle is it that imposes upon a railroad company the duty of preserving good order on its trains and makes it liable for all injuries sustained by reason of a fail-

ure to discharge this duty, we answer that it springs out of the obligation resting upon it to use every power with which it is invested to transport the passenger safely to his destination. . . . If two or three burly blackguards boarding the train of the defendant railroad at the Louisiana line, should ride through the State, insulting and beating every man, woman and child who entered the cars, can there be any doubt of the authority or duty of the officers in charge to use their utmost power to prevent the outrage? . . . We conclude then that the undoubted power which is vested in railroad officials to preserve peace and good order on their trains, and if necessary for this purpose, to eject therefrom turbulent and disorderly persons, carries with it the absolute duty to exercise the power when called upon so to do in a proper case by the other passengers: that a failure to discharge this duty stands to some extent upon the same footing as the omission to perform any other official duty, and upon the maxim *respondeat superior* renders the corporation liable."

To the same effect see 6 Blatchford's Reports, page 158; 34 Connecticut Reports, page 534.

The sound rules of law laid down by these eminent courts, asserting as they do established principles of the common law as to the powers and duties of conductors and carriers, when taken in connection with the provisions of the Act to regulate commerce, which forbid unjust discrimination, or undue prejudice or disadvantage to any person or persons while being transported as passengers, are of vital importance to all railway carriers engaged in interstate commerce and the conductors of their passenger trains, and give such passengers rights to equal protection against disorderly conduct which cannot be overlooked. In these respects they are every-day law on every passenger train in this country engaged in interstate commerce. They cannot be enforced with a steady hand in one car and disregarded in another car on the same train. They must be so enforced as to protect the weak, the humble, and the ignorant, equally with those of intelligence and commanding influence. None are

beneath the requirements of their protection, and none who violate them can be permitted to be above their power.

A position of such power, authority, trust and responsibility as that of conductor of a passenger train, is no place to be filled by a man who is unequal to the task of firmly and fairly enforcing the regulations provided by the railway company and the law of the land for the equal comfort, accommodation and protection of passengers on the train. When this powerful officer fails to protect some passengers on a train from acts of disorderly conduct on the part of intruders, which come under his observation, or which are brought to his notice, thereby permitting them to be subjected to undue prejudice and disadvantage, while at the same time he extends the protection of the law to the other passengers on the train against like disorderly conduct, it is a violation of the statute on the part of the company. If he stands by, passive, and permits intruders to go into a car not their own, and drink whiskey repeatedly out of a tin cup at the water-tank, provided by the company for the use of passengers in drinking water from that tank in that car, all this in the presence of men and women who are passengers in the car, and against the protest of a passenger in that car, and not only this, but himself indulges in drinking whiskey with them, this is not alone "a mere breach of discipline of the known rules and regulations of the company by the conductor." If, as here, it subjects the passengers in that car to an undue prejudice and disadvantage against which other passengers on that train are protected, it is also a violation of the rights of passengers in that car, as secured to them by the law of the land. In performing the duty of protecting all passengers equally and alike from disorderly conduct on the part of other passengers and persons, as the conductor treats passengers, so the railway company treats them, because he is the appointed agent of the company to perform that duty, and is there, among his other official duties, for that purpose. The like equal protection should have been afforded by defendant to petitioner and the passengers in car 30 against disorderly conduct on the part of other passengers, as was extended to passengers in car 13.

The order of the Commission is, that notice forthwith issue to the defendant, the Georgia Railroad Company, to cease and desist without any further delay from subjecting petitioner and other persons of his race and color to undue prejudice and disadvantage, when engaged in interstate travel, by failing and refusing to furnish to them passenger cars of equal comfort and accommodation to those furnished to passengers of the white race engaged in interstate travel over its line, where the same fares are charged each: and further notifying the said defendant that it must cease and desist without any further delay from failing to furnish the equal protection required by law to petitioner and persons of his race and color, when engaged in interstate travel as passengers upon its passenger trains, the same as it furnishes to passengers who are of the white race, against disorderly conduct on the part of other passengers, and of all persons whatsoever; and it is further ordered by the Commission that with said notice a duly certified copy of this report and opinion of the Commission be forthwith furnished to the said defendant, the Georgia Railroad Company.

PUTNAM P. BISHOP *v.* H. R. DUVAL, RECEIVER OF THE
FLORIDA RAILWAY & NAVIGATION COMPANY.

JAMES A. HARRIS *v.* H. R. DUVAL, RECEIVER OF THE
FLORIDA RAILWAY & NAVIGATION COMPANY AND OTHER
CARRIERS.

MEMORANDUM.

When, pending a proceeding begun to test the reasonableness of rates, the rates are reduced and made satisfactory to the complainants, the Commission will not consider the question whether the rates before reduction were or were not excessive; that question having by the reduction made become purely abstract and speculative.

The question whether rates paid ought to be refunded having been presented to a judicial tribunal, where it is now pending, the Commission will not take cognizance of it.

These two cases present the same legal questions and they were heard together.

Complaint was made that the rates charged on fruits transported from the town of Citra, in Florida, to northern markets were excessive. While the cases were pending the rates were reduced by the respondent parties, and we do not understand that any complaint is now made of them. The question, therefore, whether they were excessive as they were at the time of the commencement of these proceedings has become purely abstract and speculative.

Complainants, however, desire to be heard upon that question, and to have a decision upon it, upon the ground that otherwise the respondents may at any time restore the old rates. In that respect, however, the condition of affairs is not different from what it would have been had these proceedings not have been commenced. A carrier always has the power to put up rates, but the fact that it has the power scarcely affords sufficient reason for the institution of proceedings to determine whether other rates than those now existing would be sustainable.

The Commission must assume that the rates in this case

have been reduced in good faith, and that the carriers expect to abide by them as now established. There is nothing in the proceedings before us to indicate the contrary.

In the petitions, prayer was made that the respondents be ordered to refund sums previously paid in excess of what was claimed to be reasonable. It appears, however, that claim to a refunding has been made in the Court which appointed the receiver, who is the sole defendant in the first entitled case, and the principal defendant in the other case. The Court has therefore cognizance of that question, and the complainants, by filing their claims in court, have elected that tribunal to pass upon them. Under the circumstances, therefore, the complaints will stand dismissed.

MILTON L. MYERS, SURVIVORS OF HOSTETTER & COMPANY *v.* THE PENNSYLVANIA COMPANY OPERATING THE PITTSBURGH, FORT WAYNE & CHICAGO RAILWAY; THE BALTIMORE & OHIO RAILROAD COMPANY; THE LAKE SHORE & MICHIGAN SOUTHERN RAILWAY COMPANY; THE PITTSBURGH & LAKE ERIE RAILROAD COMPANY; THE NEW YORK CENTRAL & HUDSON RIVER RAILROAD COMPANY; THE ALLEGHENY VALLEY RAILROAD COMPANY; AND THE PENNSYLVANIA RAILROAD COMPANY.

Application for a Re-Hearing.—Filed, June 7, 1889.

A petition to re-open a case that has been decided, and for a re-hearing, should show *prima facie* that some material testimony has been overlooked or misapprehended, or some error in the findings of fact or conclusions of law.

When the application is insufficient in these respects, and only asks for a re-discussion of the facts and law already considered, with no offer of new evidence that can change the result, the application will be denied.

A. H. Clarke, counsel for motion.

MEMORANDUM.

BY THE COMMISSION:

This is an application by the petitioners for a re-opening of the case, and for permission to give further testimony with a view of showing that the decision rendered by the Commission was based upon a misapprehension of the real facts of the case. The decision heretofore made was filed on the 23d day of February, 1889, and was adverse to the petition.

The petition claimed, in substance, that the classification of the article known as Hostetter's Stomach Bitters had been advanced when the Act to regulate commerce took effect, and that the rates of transportation under the present classification were unreasonably high. The claim was not based upon

any injustice or unreasonableness in the relative classification of the bitters and the relative rates upon analogous articles, or the diminution of production or sales in consequence of the higher rates, but almost wholly upon the fact that prior to the Act to regulate commerce the bitters were accorded a lower classification and lower rates.

The report and opinion filed in the case emphasized the fact that prior to the taking effect of the Act to regulate commerce the classification and rate under which the bitters were carried were in fact special, and this view is amply supported by the testimony in the case and by the classifications that were in force at the time. The bitters were then carried under a classification designated as follows: "Manufacturer's account; released by shippers," and under that particular designation embraced no analogous article except wine. This fact was left unexplained by the testimony, and is conclusive that the classification was special for this article, and was intended to give it a lower rate.

The petitioners now claim that the Commission gave undue weight to this testimony, and that there are other facts, such as the manner in which the bitters are packed in boxes, and the pre-payment of the freight by the petitioners, that furnish just reason for a lower classification of the article, independently of its character and quality, and of the classification and rates for analogous articles.

A re-examination of the facts and of the conclusions reached in the decision rendered fails to satisfy the Commission that the disposition made of the case was erroneous, or that it should be re-opened and the petitioners given further hearing. The petitioners are entitled to the same fair consideration and just regard for their rights as producers and shippers as other shippers are entitled to, but are not entitled to any preferential classification or rates. Their goods should be classified with other analogous goods in respect to marketable value, mode of packing for transportation, and risks in the carriage. When this equality is accorded to them they are given all that they can of right demand under the law. It was shown in the report and opinion filed that they now substantially enjoy this equality. No new facts

are offered to be shown that were not before the Commission upon the original hearing. The application is, therefore, in substance, that a different conclusion should be reached upon the same facts.

The statement in the papers accompanying this application that the average rate per ton per mile upon all freight carried by one of the defendant roads is 8.73 mills, and that the rate per ton per mile upon the bitters is considerably in excess of that average, is a circumstance of very slight importance upon the question of the reasonableness of the rate on bitters. Much of the freight carried by that road consists of coal, ore and other heavy products that necessarily have a low classification and a low rate, and the quantity of articles of that character bears a very large proportion to the general traffic of the road. The rates upon freight of that description furnish no sort of standard for the rate upon goods like those of petitioners. If the goods carried by the road were generally of the character of the petitioners', or nearly similar, there would be force in the argument of an average rate. The value of a car-load, of twenty-four thousand pounds, of bitters, according to the testimony in the case, is about five hundred and twenty-five dollars. The value of a car-load of coal of like weight is less than fifty dollars. Naturally and necessarily, therefore, goods of higher market value, like those of petitioners, take a higher classification and rate, and there is no injustice to the shippers in that circumstance. Transportation charges should be, and usually are, adjusted with a proper degree of reference to the marketable value of the goods carried, and to the amount of revenue required by a carrier to make its business fairly remunerative. If the charges should be reduced, therefore, to any considerable extent, upon goods of higher value and properly included in the higher classes, it would be necessary to increase the charges upon the lower classes, and enhance the cost to consumers of goods perhaps more necessary and generally important to the public. The community at large, therefore, as well as carriers and the producers and shippers of particular articles, are interested in the proper relative classification of freights and the adjustment of rates. The interests

him tickets for his family to that point and no farther, but that it would make no difference, as complainant would receive through rates to Fort Leavenworth and New York; that on these representations he purchased $3\frac{1}{2}$ tickets to Ogden at a cost of \$122.50, and paid for his sleeping car to the same point; that on arriving at Ogden he presented his transportation request for transportation from Ogden to Fort Leavenworth and after receiving his individual ticket over the Union Pacific railroad he purchased $2\frac{1}{2}$ tickets by the same road from Ogden to Fort Leavenworth, and one ticket from Ogden to New York, expecting to receive through rates, as represented by the agent of the Central Pacific Railroad Company in San Francisco. These rates the ticket agent of the Union Pacific declined to give, and for the $2\frac{1}{2}$ tickets from Ogden to Fort Leavenworth complainant paid \$100, and for the single ticket from Ogden to New York, he paid \$70.90, which added to what he had already paid for tickets from San Francisco to Ogden, made \$293.40, or \$52.30 in excess of the through rates from San Francisco to Leavenworth and New York, which passengers were paying at that date. Complainant believes this exaction of excess was unjust and unlawful, and asks an order for its return.

Upon the answers filed in the case, the defense is that the complainant is mistaken in his facts; that no such representations were made to him in San Francisco as he claims; that he deliberately purchased transportation to Ogden, and that on applying for further transportation from that point, it was the duty of the railroad company in selling the tickets for the remainder of the distance to make the charge precisely as it did in accordance with the regular rates; that in fact it could not have done otherwise without subjecting the company to liability for unlawful discrimination as between complainant and other parties purchasing tickets for transportation from Ogden east contemporaneously.

The case was submitted for the opinion of the Commission on evidence taken *ex parte*, but with waiver of all technical objections, and with expression of entire willingness to do what under the circumstances should be found to be just and lawful.

MAJOR J. P. SANGER v. THE SOUTHERN PACIFIC COMPANY, LESSEE OF THE CENTRAL PACIFIC RAILROAD, AND THE UNION PACIFIC RAILWAY COMPANY.

Submitted May 31, 1889.—Decided June 24, 1889.

A misapprehension under which a party has paid for one journey in two sections, whereby the cost of the transportation has been made more than it would have been had a through ticket been purchased, may lawfully be corrected by return of the excess, though the carriers were without fault and only charged for each portion of the journey the regular rates.

REPORT AND OPINION OF THE COMMISSION.

COOLEY, Chairman :

The complainant in this case recites the following as facts: That on or about March 22d, 1889, the complainant, who was an Inspector General of the United States Army, was relieved from duty at the Presidio of San Francisco, in the Division of the Pacific, and began preparations to go to head-quarters, Department of the Missouri, Fort Leavenworth, Kansas, to which point he had been ordered by the Secretary of War; that he called at the ticket office of the Central Pacific Railroad Company, in San Francisco, and there and then learned from the agent of the company in response to inquiries, that the fare to Fort Leavenworth was \$60, and to New York \$90.90, to which points he was obliged to purchase tickets for his family; namely, 2½ tickets to Fort Leavenworth, and one ticket to New York, at a total cost of transportation, according to the figures given by the agent, of \$240.90. That on March 27th, he called at the office again and engaged sleeping berths for April 4th; that on April 3d he called the third time for the purpose of buying the railroad tickets for his family and paying for the sleeping berths he had engaged; that on examining the transportation request given him by Colonel Batchelder, depot quartermaster, San Francisco, and on which he was to receive his individual ticket, the ticket agent informed him that he would give him transportation to Ogden and sell

him tickets for his family to that point and no farther, but that it would make no difference, as complainant would receive through rates to Fort Leavenworth and New York; that on these representations he purchased $3\frac{1}{2}$ tickets to Ogden at a cost of \$122.50, and paid for his sleeping car to the same point; that on arriving at Ogden he presented his transportation request for transportation from Ogden to Fort Leavenworth and after receiving his individual ticket over the Union Pacific railroad he purchased $2\frac{1}{2}$ tickets by the same road from Ogden to Fort Leavenworth, and one ticket from Ogden to New York, expecting to receive through rates, as represented by the agent of the Central Pacific Railroad Company in San Francisco. These rates the ticket agent of the Union Pacific declined to give, and for the $2\frac{1}{2}$ tickets from Ogden to Fort Leavenworth complainant paid \$100, and for the single ticket from Ogden to New York, he paid \$70.90, which added to what he had already paid for tickets from San Francisco to Ogden, made \$293.40, or \$52.30 in excess of the through rates from San Francisco to Leavenworth and New York, which passengers were paying at that date. Complainant believes this exaction of excess was unjust and unlawful, and asks an order for its return.

Upon the answers filed in the case, the defense is that the complainant is mistaken in his facts; that no such representations were made to him in San Francisco as he claims; that he deliberately purchased transportation to Ogden, and that on applying for further transportation from that point, it was the duty of the railroad company in selling the tickets for the remainder of the distance to make the charge precisely as it did in accordance with the regular rates; that in fact it could not have done otherwise without subjecting the company to liability for unlawful discrimination as between complainant and other parties purchasing tickets for transportation from Ogden east contemporaneously.

The case was submitted for the opinion of the Commission on evidence taken *ex parte*, but with waiver of all technical objections, and with expression of entire willingness to do what under the circumstances should be found to be just and lawful.

After careful examination of the evidence submitted in the case we are entirely satisfied that the agents of the defendant parties in what they have done in this matter have acted in entire good faith and without any intention to defraud the complainant, or to mislead him. We think the probabilities are that complainant misapprehended what was said to him in San Francisco, and that he erroneously drew the conclusion that it would cost him no more to buy the tickets as he did, than to buy them through from San Francisco, without anything having been expressly said to justify it. Nevertheless we are satisfied the complainant has stated the case exactly as he understood it, and that had he known or supposed at the time he procured transportation at San Francisco that unless he then bought through tickets he would be charged an additional sum, the through tickets would have been purchased.

The case, then, is one in which, through misapprehension of the situation, complainant has been compelled to pay the sum of \$52.30 more than he would have paid for the same service had he been laboring under no mistake. The exaction of this sum has all the effect of a wrong to him, though no wrong was intended and no one is really in fault. We think under such circumstances it would be entirely proper and right for the defendant carriers to restore to complainant what because of his misapprehension he has paid to them over and above the regular through rates. This course will do no wrong to any else, will work discrimination against no one, and at the same time will leave with the carriers the customary compensation for the service performed.

This intimation of our views will doubtless be sufficient for a disposition of the case. The refunding should be so made that each carrier will retain the exact sum it would have received had through tickets been purchased at San Francisco as the complainant at first proposed.

THE NEW YORK PRODUCE EXCHANGE v. THE NEW YORK CENTRAL & HUDSON RIVER RAILROAD COMPANY, THE MICHIGAN CENTRAL RAILROAD COMPANY, THE LAKE SHORE & MICHIGAN SOUTHERN RAILWAY COMPANY, THE CHICAGO & GRAND TRUNK RAILWAY COMPANY, THE GREAT WESTERN RAILWAY COMPANY OF CANADA, THE NEW YORK, LAKE ERIE & WESTERN RAILROAD COMPANY, THE CHICAGO & ATLANTIC RAILWAY COMPANY, THE NEW YORK, PENNSYLVANIA & OHIO RAILROAD COMPANY, THE NEW YORK, CHICAGO & ST. LOUIS RAILROAD COMPANY, THE WEST SHORE RAILROAD COMPANY, THE DELAWARE, LACKAWANNA & WESTERN RAILROAD COMPANY, THE GRAND TRUNK RAILWAY COMPANY OF CANADA, THE PITTSBURGH, FORT WAYNE & CHICAGO RAILWAY COMPANY, THE PENNSYLVANIA RAILROAD COMPANY, THE PITTSBURGH, CINCINNATI & ST. LOUIS RAILWAY COMPANY, THE WABASH WESTERN RAILWAY COMPANY, THE BALTIMORE & OHIO RAILROAD COMPANY, THE PHILADELPHIA & READING RAILROAD COMPANY, AND THE CENTRAL RAILROAD COMPANY OF NEW JERSEY.

**Heard at New York, June 13 and 14, 1888. Briefs submitted July 31, 1888.
Decision filed June 19, 1889.**

From November 4, 1887, to February 20, 1888, the Trunk Lines, so called, under resolutions of their Association, made through export rates of which the inland proportion accepted by them was, at the port of New York, often ten cents or more per hundred pounds less on like traffic than the published tariff rates charged at the same time to the same port.

***Held.* that the discrepancy between the proportion of the through rate accepted and the established tariffs for seaboard consignments for the**

same inland carriage, is not shown to have been justified by any circumstances tending to show that it was just or proper, and that it must therefore be deemed an unjust and unlawful discrimination as against the transportation terminating at that port.

It is essential that any method for making rates should be practicable, and not afford a cover for discrimination and injustice. The only practicable mode yet devised for making through export rates, as appears by past experience, is to add to the established inland rates from the interior to the seaboard the current ocean rates.

Under the amendments of March 2, 1889, to the statute, requiring ten days' previous notice of advances and three days' previous notice of reductions in rates, they can not be varied from day to day, or oftener, to meet fluctuations in ocean rates.

Whenever a tariff is established for merchandise billed or intended for export by sea, and ocean rates are not specified, either because of fluctuations or for any other reason, so that only the charge for inland transportation is definitely fixed, the tariff as filed and made public should show the rate charged by the inland carrier or carriers to the point of export, including all terminal charges and expenses, and should also show in what manner the through rate to the point of ultimate destination is to be determined, whether by addition of the ocean rate from time to time prevailing, or how otherwise.

Foster & Wentworth, attorneys for petitioners.

John D. Kernan, counsel for petitioners.

Frank Loomis, for N. Y. C. & H. R. R. R. Co. and connecting lines.

George C. Greene, for L. S. & M. S. Ry. Co.

E. W. Meddaugh, for Grand Trunk Ry. Co. of Canada and connecting lines.

James A. Buchanan, for N. Y., L. E. & W. R. R. Co.

Samuel E. Williamson, for N. Y., C. & St. L. R. R. Co.

Ashbel Green, for the West Shore R. R. Co.

M. Taylor Pyne, for the D., L. & W. R. R. Co.

Wayne Mac Veagh, for Penna. R. R. Co. and connecting lines.

G. R. Kaercher, for Phila. & Reading R. R. Co.

Robert W. de Forest, for Central R. R. Co. of New Jersey.

Read & Pettit, for Commercial Exchange of Philadelphia.

REPORT AND OPINION OF THE COMMISSION.

SCHOONMAKER, *Commissioner*:

On March 8, 1888, the Commission, having the subject of

tariffs on export freight from the United States under consideration, issued the following order:

“Every tariff of rates and charges which a common carrier subject to the provisions of the Act to regulate commerce, by itself or jointly with one or more other carriers, whether such carriers are or are not subject to such Act, shall establish for the transportation of grain, flour, meal, meats, provisions, lard, tallow, canned goods, cotton, tobacco, live stock, or other articles of customary export, from any point within the United States to a seaport thereof, or to any point in or on the boundary of an adjacent country, or to any foreign port or place, is required to be filed with the Commission and shall be made public.

“In all cases where a tariff is established for such merchandise billed or intended for export by sea, and ocean rates are not specified, either because of their fluctuation or for any other reason, so that only the charge for inland transportation is definitely fixed, the tariff as filed and made public shall show the rate charged by the inland carrier or carriers to the point of export, including all terminal charges or expenses, and shall also show in what manner the through rate to the point of ultimate destination is to be determined, whether by the addition of the ocean rate from time to time prevailing, or how otherwise. When the rate is a gross sum for the transportation of freight from a point within the United States to a port or place in a foreign country, the tariff as filed and made public shall in every case show what part of the whole is allowed to the carrier or carriers for inland transportation to the point of export by sea, including all terminal expenses or charges; and if such part is subject to be increased or diminished, contingently or otherwise, or if in any other case the charge for inland transportation is subject to any change or modification in case the property carried is exported, the fact and the manner in which the increase, diminution, or change is to be determined, and the extent thereof, shall be stated.

“Every such tariff of rates and charges shall be published by plainly printing the same in large type of at least the size

of ordinary pica, and copies thereof shall be kept for the use of the public in such places and in such form that they can be conveniently inspected, at every depot or station of any carrier making or issuing the same at which any traffic to which it relates is received or delivered.

“This order shall become operative on March 20, 1888.”

On April 18, 1888, the New York Produce Exchange, a corporation existing under the laws of the State of New York and located in the city of New York, composed largely of merchants engaged in foreign and domestic commerce, filed with the Commission its petition, charging therein on information and belief,

“First. That since about April 4, 1887, the defendants have been railroads and corporations engaged as common carriers in the transportation of property shipped from Chicago and other western points to New York city and other Atlantic points and to European ports, such transportation being made to New York city and other Atlantic points wholly by rail; or to New York city and such other points and European ports partly by rail and partly by water, and such transportation being in all cases under some common control, management or arrangement for continuous carriage between the points aforesaid, so that each of the defendants constituted a part or portion of some through and continuous line of transportation so engaged as aforesaid under an established joint tariff, and is as to the said transportation within the provisions of said Act. That the Trunk Line Association; the Central Traffic Association; the Joint Committee, so called, and all of the fast freight lines operating over one or more of said railroads, are agents of some or all of said railroads so engaged as aforesaid, and the rates, classifications, rules and regulations which they make and enforce are those of said railroads and are those which regulate and substantially govern and control all such through and continuous transportation between the points aforesaid. That since about April 4th, 1887, the defendants have professed to maintain joint rates and classifications between Chicago and

New York for their said continuous lines and routes, as follows :

	Class.	Rate.
Flour, grain, in car-load lots.....	6	25 cts.
Flour, grain, in less than car-load lots.....	5	30 “
Provisions, as salted meats, etc., in car-load lots	5	30 “
Provisions, as salted meats, etc., in less than car-load lots.....	4	35 “

“That the joint rates for the transportation of like property from a number of western points are based upon the Chicago rate, and are either the Chicago rate or a certain agreed amount or percentage added to or deducted therefrom.

“That the defendants, since April 4th, 1887, in violation of said Act have been guilty of unjust discriminations, in that they have notoriously allowed to a large number of persons special rates, rebates and drawbacks, either given directly or indirectly, by means of such devices as under-billing or under-weighing property transported, and have also been in the habit of charging a large number of persons for transportation from Chicago and other western points, taking Chicago rates as aforesaid to New York city, the foregoing schedule rates upon flour, grain, provisions and property covered by classes. 4, 5, and 6, when such property was delivered to consignees at New York city for domestic consumption or was subsequently exported, while charging other persons rates much lower and even as low as fifty per cent. thereof for a like and contemporaneous service under substantially similar circumstances and conditions when the property was delivered to vessels and steamship lines for shipment to foreign ports under through bills of lading, issued by the defendants under common arrangement with such vessels and steamship lines for continuous carriage at joint rates from the point of shipment to Europe ; that, for example, while charging and receiving 33 and 35 cents per 100 lbs. for transporting goods of class 5 in less than car-load lots from Chicago to New York, they at the same time have charged and received but 19 cents for the

same transportation of like goods when the same were delivered to steamship companies for export, which charge of 19 cents included a charge of 3 cents per 100 lbs. for lighterage in New York which the defendants paid out of said 19 cents; that by the first of March last the foregoing unjust discriminations had become notorious and matter of common report, and were carried to such an extent through the payment of rebates by railroads and steamship companies to some shippers and localities that the net rates to foreign ports were lower than to New York; that on March 8th, 1888, your honorable Commission issued an order to take effect on March 20th, 1888, requiring the defendants, among others, to prepare and file and publish their rates to the seaboard with the ocean rates, if any given, separately stated; that the defendants have failed and neglected to file and publish rates as required by said order except in a few instances where there has been a partial compliance; that said defendants also fail to state in each bill of lading issued by either of them to foreign ports the inland charge and the ocean charge separately, and thus prevent ascertainment of the actual inland rate.

“ Second. That by reason of the difference in their rates for transportation hereinbefore referred to the said defendants since April 4th, 1887, have thereby made and given undue and unreasonable preferences and advantages to persons, firms, companies, corporations and localities engaged in the shipment under such through bills of lading, or in the handling and consumption of such goods abroad, and have subjected persons, companies, firms and corporations and consignees in and about the city of New York to undue and unreasonable prejudice and disadvantage by reason of the higher rates charged to them for like and contemporaneous service under substantially similar conditions and circumstances; that there are no conditions or circumstances relating to or bearing upon the transportation in question that justify any such differences in rates as have existed and do exist between the rates to New York city for export under through bills of lading and the rates upon consignment to New York city; that the complainants insist that the said Act

requires that the rates to New York city shall be the same upon the said classes of property whether the same are carried to New York and there delivered to consignees or through New York and delivered to consignees abroad.

“ Third. That the said defendants, in violation of said Act, since April 4th, 1887, have charged and received, and do now charge and receive, a greater compensation for transporting property as hereinbefore described from Chicago and said western points to New York city, than they charged and received for like service under substantially similar circumstances and conditions for transporting like property from said Chicago and western points through New York city to European ports under common arrangement for joint rates with vessels and steamships, the shorter being included within the longer distance ; that rates to foreign ports can now be obtained from Chicago through New York at about 3 cents per 100 lbs. less than to New York city.

“ Wherefore, the complainants respectfully ask that the honorable Interstate Commerce Commission shall investigate the matters herein complained of, and shall obtain from the defendants full and complete information in regard thereto, and shall then adjudge and determine :

“ 1. That in the particulars in this petition alleged the defendants have violated and are violating the ‘ Act to regulate commerce,’ approved February 4, 1887.

“ 2. That all rates for transportation from Chicago to or through New York city to foreign ports shall be the same for the transportation to New York.

“ 3. That compliance with the law and with the order of March 8th, 1888, as to filing joint tariffs, be compelled by the methods and under the penalties provided, and that all such tariffs be likewise posted and published by order, to be issued under the discretion given to the Commission in that regard, and that in every bill of lading issued to a foreign port the inland rate and the ocean rate be stated separately.

“ 4. That, in reference to all of the matters complained of,

your petitioners may have such other or further relief as to your honorable Commission may seem just and proper."

The complaint was served on the several defendants, and answers made thereto.

It is not important to give these answers, or even their substance, further than to state that some denied the alleged violations of the statute charged in the complaint, and others admitted that differences had been made in rates on export freight and domestic freight between November 4th, 1887, and February 20th, 1888, but justified those differences under their interpretation of the statute, and all denied that such differences had been made subsequent to February 20th, 1888. At the hearing certain facts bearing upon the questions involved were given in evidence, but the case turned mainly upon questions of general policy and of law, with the view to a decision upon them, the facts being important only to have the questions presented.

On April 24, 1888, the Pennsylvania Railroad Company presented the following petition :

" To the Honorable the Interstate Commerce Commission :

"The petition of the Pennsylvania Railroad Company on behalf of itself and the different lines operated, controlled and affiliated in interest with it, respectfully represents :

"That after the Act to regulate commerce had gone into effect the company entered into an arrangement with connecting carriers for the establishment of a continuous line or route for the carriage of freight from the cities of Chicago, State of Illinois, and Milwaukee, State of Wisconsin, and intermediate points, to Liverpool, London, Glasgow, and other European points, thus constituting a continuous carriage and shipment under a common arrangement, from a point in one of the States of the United States to a point or place in a foreign country ;

"That by virtue of said arrangement a joint tariff of rates in a gross sum for such line or route was made and duly filed with this honorable Commission, as is required by the fifth paragraph of section six of said Act ;

“That this arrangement was continued until the twentieth day of February, 1888, when, pursuant to a resolution adopted by the Trunk Line Executive Committee, which had resolved, at a meeting held on the eleventh day of February, 1888, that ‘the system now in operation of making through export tariffs be discontinued, and that thereafter the rates on export traffic be the same as the inland tariffs plus the ocean rates current from time to time,’ the same was discontinued and inland rates alone filed, accompanied with a written statement that through export freights were made by adding such inland rates to the rates of connecting ocean carriers ;

“That although the resolutions above referred to were passed unanimously, yet they were accompanied by the statement on the part of the Pennsylvania Railroad Company that the acquiescence of the officers of that company was only occasioned by their deference to the desire of the other companies in the Trunk Line Association; and with the further statement that the officers of that company had not altered their opinion as to the justice and legality of the through billing system, and that they believed the results from its abandonment would be injurious. Experience since the twentieth of February, 1888, has sustained the correctness of the view of your petitioner thus stated, and your petitioner apprehends that it will be its duty at an early period to make a new arrangement for carriage from points within the United States to points in a foreign country for a gross sum.

“Pending the considering of this matter your petitioner received the order made by this honorable Commission at its meeting held in the city of Washington on the eighth day of March, 1888; copy of which order is hereto attached and marked ‘Exhibit A.’ This order, if within the meaning of the law and enforced by this honorable Commission primarily and ultimately by the courts, would prevent the doing of that which, as your petitioner is advised, under said Act parties to such common arrangements for a continuous carriage are permitted to do, namely, filing the joint tariff of rates established for such route by such carriers, subject only to the

requirements of publicity in such manner as might be deemed practicable by this honorable Commission.

“Your petitioner most respectfully submits, that by the sixth section of said Act the power of the Commission is limited to requiring that the tariffs for joint through rates shall be filed, and to the direction as to the manner and measure of publicity.

“That nowhere in said Act can warrant be found for requiring any one of said joint carriers to show in their tariff or to make public, either the manner in which the through rates to the points of ultimate destination is to be determined when only the inland rate is definitely fixed, or, when a gross sum for the transportation is given from a point within the United States to a port or place in a foreign country, show what part of the whole is allowed to the inland carrier.

“Your petitioner further represents, that if the power of this honorable Commission to make said order is vested in your Commission, the making thereof, under the circumstances, does not tend to subserve the purposes contemplated by said Act to regulate commerce, but on the contrary works to the prejudice both of the shipper and the carriers, as this petitioner believes could be established to the satisfaction of this honorable Commission were opportunity afforded.

“This petitioner, therefore, most respectfully prays that it may be accorded a hearing, and that an order may be made modifying said order of the 8th of March, 1888.”

On June 13th, 1888, the case was brought to a hearing upon the complaint and answers, and upon the petition, and the testimony taken.

The following facts appeared in evidence:

The New York Produce Exchange is a corporation duly created and existing under the laws of the State of New York, and located in the city of New York, composed largely of merchants engaged in foreign and domestic commerce.

Since April 4th, 1887, the respondent companies named in the petition have been railroad corporations, as therein alleged, engaged in the transportation of property shipped from Chicago, and other western points, to New York city

and other Atlantic seaports, wholly by rail, a large proportion of the property so carried' being trans-shipped to European ports by water. A part of such transportation was under contracts for a through rate to the foreign destination, and was carried under some arrangement for continuous carriage between the points of origin and the European port to which it was destined. Each of said respondent roads constituted a part or portion of some through and continuous line of transportation under established joint tariffs; and the respondents are, as to such transportation to New York city and other Atlantic seaports, within the provisions of the Act to regulate commerce.

The Trunk Line Association, the Central Traffic Association, the Joint Committee (respectively so-called), and such fast freight lines as are operated over any of the respondents' roads are, to a qualified and limited extent, agents of the respondents or certain of them, and connecting lines with which respondents have established joint tariffs.

The Trunk Line Association, the Central Traffic Association and the Joint Committee, aforesaid, make rates, classifications, rules and regulations which are accepted by the railroads mentioned in the petition, and the fast freight lines operated over certain of them, which rates, classifications, rules and regulations are those which regulate, govern and control such through and continuous transportation between the points aforesaid as to classification and joint rates.

Since April 4th, 1887, the joint rates and classifications, *via* all rail, established, published, filed and maintained, have been as follows:

CHICAGO TO NEW YORK.

Commodities.	Apr. 4, '87,	Jan. 2, '88,	Since Mch. 5, '88.
	to Jan. 2, '88.	to Mch. 5, '88.	
Flour and grain in car-load lots.....	25c.	27½c.	25c.
Flour and grain in less than car-load lots	30	33	30
Provisions, as salted meats, in car-load lots.....	30	33	30
Provisions, as salted meats, in less than car-load lots.....	35	38½	35

The joint rates for transportation of like property from a number of Western points to New York are based upon the Chicago rate, and have been and are either the same as the Chicago rate or a certain percentage thereof, greater or less than the Chicago rate.

The membership of the New York Produce Exchange comprises a large number of merchants, who represent a capital of many millions of dollars, and are actively engaged in foreign and domestic commerce and in purchasing, transporting, storing, grading, inspecting, exporting and selling, for foreign and domestic use, the flour, grain, and provision products of the west and southwest portion of the United States which are offered for sale in Chicago and other western points, and for the handling of which there is active competition between the merchants of the East and of the West.

The facilities in and about the port of New York for handling the business aforesaid are large.

On November 4th, 1887, the Joint Committee, aforesaid, adopted the following rules with reference to export rates, viz:

“That substantially the basis for making through export freight rates from Chicago be: To add to the actual inland all rail tariff rates to each and all the different seaboard export cities, the different ocean steam quotations thence to the foreign ports to which it may be from time to time agreed to issue through rates upon the leading articles agreed to be specified in the tariff. The average result thus obtained, barring fractions, to determine the uniform through rates in cents per hundred pounds, *via* all ports, to each foreign destination.” (For example, to take the New York and Philadelphia rates and add them together, and then add the ocean quotations to those ports, and then to ascertain the average of all and make that a uniform rate from Chicago to the foreign ports.)

On February 10th, 1888, said Joint Committee adopted the following:

“*Resolved*, That, taking effect Monday, February 20th,

1888, the system now in operation of making through export tariffs be discontinued; and that thereafter the rates on export traffic be the sum of the inland tariffs plus the ocean rates current from time to time, except that the inland rate to Boston on export traffic may be the same as to New York; it being understood that on grain shipments the elevator charges at point of export shall be also added.

“Resolved, That the inland rates be filed with the Interstate Commerce Commission, with a written statement that the through export rates are made by adding such inland rates and elevator charges to the rates of connecting ocean carriers.

“Resolved, That from this date to February 20th, the published tariff rates to foreign ports will be used in giving rates to foreign ports named therein, but nothing to be contracted that can not be forwarded by the 20th. For foreign points not named in the export tariff, full domestic rates are to be used as the proportion of the through rates, except that New York rates may be made to Boston on export traffic.

“Resolved, That export traffic contracted, way-billed and actually forwarded from points west of Chicago, St. Louis, &c., prior to February 20th, will be passed at the present export tariff rates or the authorized export basis, to and including February 25th, at Chicago, St. Louis, &c., and thereafter the way-bills shall be corrected.”

Between November 4th, 1887, and February 20th, 1888, the inland proportion of the rate for the transportation of merchandise through to foreign ports was frequently less than the rate for the transportation of the same kind of merchandise from the same point of shipment for delivery to the consignee at the seaboard; and the share of such through rate to the foreign port of each defendant line was in like manner less in one case than in the other.

The cost of transportation of freight from Chicago to New York and of delivery by lighter in New York harbor, is no greater on freight for New York consignees than on freight delivered to steamships for immediate export.

The method of making a uniform rate from Chicago and other western points to the seaboard, whether for export or for domestic consumption, except at Boston, has prevailed since July 1st, 1877, when an agreement as to rates was entered into by all the lines, until the Trunk Line resolution for a different method took effect, November 4th, 1887.

Under the resolution of November 4th, 1887, contracts were entered into by the carriers with shippers at the West for a through rate from point of shipment to the foreign port of destination, covering both the inland and the ocean transportation.

Under this system ocean rates largely advanced and inland carriers were not able to maintain uniform inland rates, but were sometimes required to pay fifty per cent. of the through rate to the ocean carrier, resulting in a discrepancy between the inland proportion of the export rate and the domestic rate of ten cents a hundred pounds at New York and eight cents at Philadelphia. The ocean rates are made by the ocean carriers, which are mostly owned abroad, and not under the control of inland carriers. And one effect of contracts for through rates to foreign ports had been to deprive inland carriers of the control of their own inland rates on export business.

The facilities in New York city for storing and holding the surplus grain from the West that accumulates there are in excess of the amount of such accumulations. Twenty millions of bushels are frequently in storage. The storage capacity is twenty-five millions of bushels.

Very full statistics were put in evidence showing the grain and flour transportation from the West to New York and other seaboard cities for a series of years, both for direct export and for consignment at the seaboard. These are too voluminous for the limits of this report, and only such selections will be made as relate to the points to be decided.

The number of tons of flour and grain respectively carried to the cities of New York, Boston, Philadelphia and Baltimore, consigned to those cities and exported, and compared with the tons of flour and grain carried by the Trunk Lines

through those cities on through bills of lading, consigned to foreign ports, during the periods below indicated, are as follows:

FLOUR.

FROM—	TO—	Seaboard consignments.	Foreign consignments.
Dec. 1, 1883.....	April 30, 1884.....	314,353	146,748
Dec. 1, 1887.....	April 30, 1888.....	428,702	302,936

GRAIN.

FROM—	TO—	Seaboard consignments.	Foreign consignments.
Dec. 1, 1883.....	April 30, 1884.....	869,526	74,049
Dec. 1, 1887.....	April 30, 1888.....	424,903	58,855

At New York city alone the comparison is as follows:

FLOUR.

FROM—	TO—	Seaboard consignments.	Foreign consignments.
Dec. 1, 1883.....	April 30, 1884.....	189,629	77,090
Dec. 1, 1887.....	April 30, 1888.....	196,284	107,088

GRAIN.

FROM—	TO—	Seaboard consignments.	Foreign consignments.
Dec. 1, 1883.....	April 30, 1884.....	489,554	24,109
Dec. 1, 1887.....	April 30, 1888.....	251,109	12,038

Tables were put in evidence showing the inland tariffs on certain commodities from Chicago to Baltimore, Philadelphia and New York, from November 4, 1887, to February 20, 1888, and the proportion of the through tariffs to Liverpool to the same cities for the same time.

The table showing the rates and proportions to New York will be a sufficient illustration. The columns under "A" represent the rates on consignments to the seaboard, and the columns under "B" represent the inland proportions of the through rates to Liverpool.

FROM—	TO—	Bacon, Pork and Beef.		Lard and canned goods.		Flour.	
		A.	B.	A.	B.	A.	B.
Nov. 4, 1887...	Nov. 14, 1887...	30	25.31	30	.....	25	20
Nov. 14, 1887...	Nov. 21, 1887...	30	23.875	30	22.875	25	19.375
Nov. 21, 1887...	Dec. 27, 1887...	30	21.875	30	21.375	25	18.375
Dec. 27, 1887...	Jan. 2, 1888..	30	25.375	30	24.875	25	19.855
Jan. 2, 1888...	Jan. 11, 1888...	33	25.375	33	24.875	27.5	19.875
Jan. 11, 1888...	Jan. 26, 1888...	33	23.375	33	22.875	27.5	18.875
Jan. 26, 1888...	Feb. 1, 1888...	33	21.875	33	20.875	27.5	18.125
Feb. 1, 1888...	Feb. 2, 1888...	33	20.875	33	19.375	27.5	16.875
Feb. 2, 1888..	Feb. 3, 1888...	33	20.875	33	18.875	27.5	16.875
Feb. 3, 1888...	Feb. 6, 1888...	33	19.875	33	18.375	27.5	16.375
Feb. 6, 1888...	Feb. 7, 1888...	33	18.875	33	18.125	27.5	15.625
Feb. 7, 1888...	Feb. 8, 1888...	33	18.875	33	18.125	27.5	15.375
Feb. 8, 1888...	Feb. 9, 1888...	33	17.875	33	17.875	27.5	14.875
Feb. 9, 1888...	Feb. 10, 1888...	33	17.875	33	17.375	27.5	14.625
Feb. 10, 1888...	Feb. 11, 1888...	33	17.375	33	17.375	27.5	14.625
Feb. 11, 1888...	Feb. 20, 1888...	33	18.375	33	18.375	27.5	15.625

In view of the importance of the questions involved in this case, and the earnestness of the parties evinced in the discussion, and also that the record may show the differences among carriers themselves in respect to the rules that ought to govern the making of export rates, it is deemed appropriate to set out somewhat fully the arguments presented.

The argument in behalf of the complainants was in substance as follows :

First. The Commission had jurisdiction to make the order of March 8, 1888.

Second. In charging less than inland tariff rates upon export business the defendants were guilty of unjust discrimination against New York consignees under section two of the Act to regulate commerce.

Third. Such lower rates upon export business violate the third section of said Act, which forbids undue and unreasonable preference or advantage to any particular person, company, firm, corporation or locality, or any particular description of traffic, in any respect whatsoever, or the subjecting any particular person, company, firm, corporation or locality, or any particular description of traffic, to any undue

or unreasonable prejudice or disadvantage in any respect whatsoever.

Fourth. Under the law and the facts the preference and advantage given by an inland export rate which is lower than the inland tariff rate is undue and unreasonable as between competitors who can, and those who cannot, practically avail themselves of it, and as between export and domestic traffic.

Fifth. "The defendants violated the long and short haul clause, because they charged more for shorter distances than to the seaboard. The principal object of this fight is to knock out the long and short haul clause. If under section four a line can be projected to foreign ports, then rates from Chicago to shorter points than to the seaboard will not violate the Act, although they much exceed the sum received by the railroads to the seaboard, provided they are within the rate to Liverpool, or Constantinople, or Calcutta. This would be most disastrous to the efficiency of the Act as designed by Congress. There can be no longer line than to the seaboard under section four. To give to this section its clearly intended meaning we must fix the end of the long line at the seaboard, and must determine the extent of its application to interior point rates with reference to the seaboard competitive and other conditions."

Sixth. "Public policy forbids that inland export rates shall be lower than inland tariff rates, for many reasons, and hence there is no justification for them in this direction.

"(1) The ultimate result of the practice would be to destroy competition between the seaboard export points and interior storage centers in handling products, and to concentrate the control of both producer and consumer in fewer places and in fewer hands. No ultimate benefit can result therefrom. Public policy never favors this.

"(2) Competition in carrying to the seaboard would be lessened, because while the strong railroad lines could own, or control, or subsidize ocean lines or vessels, their com-

petitors could not. This, in turn, would operate to destroy ocean competition at the seaboard, and to concentrate all business in the hands of some strong railroad lines and their ocean lines and vessels. This would be against public policy.

“(3) This part of our contention is fully covered by the fact that the defendants themselves have always maintained that like inland rates for both inland and domestic consignments to New York with certain concessions and differentials to weaker competing ports, is the best practical method of meeting and solving all the conditions of the problem. Under this system a vast business has been built up and vast capital has been invested at the seaboard. Contentions and wars between railroads, and between competing ports, have been settled upon this basis and never could be on any other. In view of these facts is it wise, as a matter of public policy, to approve of a new method, which the experience of last winter shows will cripple the business and ocean carrying competition of the seaboard; which by reason of the situation of seaboard and interior competitors can only be practically available to those at interior points; which will demoralize all rates, and complicate the present difficult question of maintaining one set of inland rates, by adding in all their troublesome relations, another set of rates based on different and uncontrollable conditions; which will invite rate-cutting and strife among carriers, and open the door to new devices for favoring individuals, localities, &c? Is it good public policy to thus disturb all business and defeat the intent of the long and short haul clause by extending lines beyond the seaboard; especially when the result will be to make American products much dearer in America than Europe, without benefit to the producer?

“(4) Export and import ports are fixtures—they are the natural centers of exchange with foreign countries. The conditions of all markets are there most quickly felt and responded to, and it is from those places that advantage can be most readily taken of foreign market demand and compe-

tion in ocean carrying. While they, for these reasons, can not demand that their dealings with foreign countries *shall be favored by interior rates, so as to prevent billing between the interior and foreign market direct*, yet they only urge a sound public policy when they insist that railroads shall favor neither through billing nor seaboard consignment in their rates, but that the inland tariff, founded upon competitive conditions to and at the seaboard, shall be the basis of all rates.

“The theory that the inland export rate ought to be more flexible than the inland tariff rate, in order to place our surplus crops abroad is all a misconception.

“Our exportable surplus of wheat, for example, is about one hundred millions of bushels. Of this quantity Great Britain absorbs about four-fifths, or eighty millions. That the market value of the exportable surplus product of any country fixes the value of the whole crop, is a well known and established fact. Prices would advance in England if our surplus was withheld, or its exportation merely checked. The attempt of the railroad companies, therefore, to meet markets or Indian competition, &c., is a direct and positive injury to the producer, because thereby the surplus is hurried to market, and prices depressed, not only on the quantity thus prematurely marketed, but of the entire crop, far below the nominal or actual value, if the regular course of supply and demand is allowed to prevail. Therefore, instead of helping the farmer, they create a new and uncertain commercial factor, which, while it injures every producer, by artificially depressing prices, at the same time reduces the legitimate earnings of the railroad companies, *cui bono?*

“The inland tariff rate has always readily marketed our surplus crops abroad. This tariff rate is fixed by seaboard competitive conditions, and always prominent among those conditions are the very foreign market demands and requirements which a special low inland export rate is to be devised to meet. These are, and always must be, sufficiently met by the inland rate to the ocean.

“(5) Public policy demands *steadiness* in rates more than

extreme cheapness. A divorce between inland tariff and inland export rates is a premium for strife over export business. The present penalty of disturbing all inland tariff rates by cutting the inland export rate is a wise and efficient restraint.

“American products for export are raised in all States from New York to San Francisco. To have two rates from each trade and producing centre to each port would introduce chaos into inland rates, because of the ocean competition at each and all ports. It would be directly against the policy of the Interstate Commerce Act, which is to equalize rates, and not to encourage further inequalities.

“(6) Combinations with and ownership in ocean lines by railroads is advocated as wise, and is the necessary result of through billing with a special inland export rate.

“To encourage this is not good public policy, but would tend to dangerous and uncontrollable monopoly.

“(7) Without the capital, facilities and energy of the so-called middle-man in gathering together and finding markets therefor, American products could not reach consumers, advantageously to the producer. Is it good public policy to wipe out those of them at the seaboard?

“Is it permissible under any view of what public policy requires to allow these servants, railroads, to engage in their partial destruction? We submit not.”

Seventh. “The theory which was advanced on the hearing that the inland export rate ought to be as much lower than the inland tariff as is needed from time to time to market our surplus products abroad, however good and desirable, is utterly impracticable.”

The Commission was asked to hold :

I. “That in charging a lower inland rate for export business to New York than the inland tariff rate, the defendants violated sections two, three and four of the Act to regulate commerce.

II. "That through rates to foreign ports through seaboard ports shall hereafter be made by adding the going, or agreed ocean rate, to the inland tariff rate, except that the New York rate shall be given to Boston on exports as heretofore.

III. "That in each through bill issued, the inland and ocean rate shall be separately stated.

IV. "That the order of March 8th be amended so as to require compliance with these requirements, and then be enforced."

The argument on behalf of complainant was strongly supported by the New York Central & Hudson River Railroad Company and its western affiliations, and by the Commercial Exchange of Philadelphia. The railroad companies mentioned contended that the evidence tended to establish, and that the contrary cannot be maintained:

"1st. That the seaboard exporter has long held and holds a legitimate place in connection with the traffic of the country and should not suffer from unjust or even impolitic discrimination.

"2d. That, with the exception of a very limited amount, comparatively, of freight delivered directly to ocean steamers from railroad piers—conditions applying as well to local exports as to those upon through bills of lading—the expense to the railroad companies in transportation and in terminal service at the seaboard is practically no more upon domestic traffic than upon export traffic.

"3d. That it is of the greatest advantage to the commerce of the country that the extensive store-houses and storage facilities, long established at the seaboard, should be maintained and utilized, so that American products there accumulated should be always ready for vessels seeking cargo, and for prompt and sure forwarding and delivery to foreign markets.

“ 4th. That, without increased cost to the railroad company, the western exporter, if he so desires, should be permitted, in accordance with established custom, to handle his own products at the seaboard, making his ocean contracts and inspecting and properly preparing his shipments before delivery to the ocean carrier, instead of losing all charge of his property after delivery to the carrier in the far West.

“ 5th. That the commerce of any port is best created and fostered by the certainty of ‘spot freight,’ rather than by a dependence upon freight contracted through to foreign countries at the West, with the uncertainties of inland transportation, and the consequent necessity for contracts long in advance of sailings.

“ 6th. That, the expense to the railroad companies being practically the same on both classes of export traffic, any difference in rate in favor of the through bill of lading—unless justifiable by dissimilar circumstances and conditions—is a discrimination against the seaboard exporters, and of bad policy.

“ 7th. That the seaboard exporter, making his own ocean rates with the steamship companies, and entitled to the same inland rate as that which the interior exporter receives on a through bill of lading, must necessarily be advised as to that inland rate, in order to be placed on an equality with the interior exporter, who secures both ocean and inland rates by his bill of lading; and this can not be effected by subsequent and uncertain rebates to conform to fluctuations in the inland share of the *through* bill of lading rate, but necessitates a *fixed* inland rate; not subject to change without notice.

“ 8th. That, under ordinary circumstances, the New York tariff rate, at New York and Boston, with the agreed differences at Montreal, Philadelphia and Baltimore, has practically served well as this *fixed* inland rate for both classes of export traffic.

“ 9th. That in the past, the necessity for making export

rates 'to meet the markets abroad,' has seldom, if ever, existed without at the same time such conditions of limited movement of freight and competition to the seaboard, as to cause a reduction in seaboard rates on domestic business without reference to or thought of prices abroad.

"But conditions may exist, and are easily possible, which would justify, as was contended in the Boston case, different rates on export and domestic business—differences which when capable of justification, obviously promote the business interests of localities and of the country, and are approved by public policy.

"10th. That ocean rates do fluctuate, and always have fluctuated, weekly, daily and hourly, even for the same sailing, and evidently from conditions not affecting rail carriers or affecting them in a less degree; and that it is not to the interest of rail carriers (or indeed of steamship companies) to combine inland and ocean rates as a through rate by any system which will thus extend this fluctuation to the rail proportion, which could otherwise be free from it.

"The power to quote through rates at pleasure might give a temporary advantage to any one line alone adopting that system, but considering the system in view of its general adoption—a necessary result so soon as the amount of traffic secured under it by one or more railroad companies was deemed excessive by the other companies—the constant changing of the inland proportion of through rates, in addition to the necessary loss of revenue to the rail, would make any protection to the seaboard exporter impossible.

"Especial attention to, and examination of this matter of fluctuation in ocean rates is asked, as distinguished from any fluctuation in inland rates, because of its great weight and importance in the question at issue, the ocean rates being beyond the control of the Commission, and attention is called to one reason for this fluctuation, not requiring proof, but obvious, viz.: the regular lines of steamers have their fixed dates of sailing, and must secure cargoes regardless of rate; or, having secured a part, must complete the cargo with the particular class of freight, between decks or

ballast, required; while all irregular steamers or "tramps" must secure the earliest possible sailing, delay being often more expensive than a considerable concession of rates.

"11th. We believe, also, that while a system of through rates to foreign ports, the same *via* all American ports and based upon percentage or other divisions between rail and ocean, might be theoretically a perfect system, it would drive away some of our regular steamship lines, would make our ports most undesirable to outside vessels, would cripple if not destroy our seaboard exporters, would demoralize export and domestic rail rates, and in fact, is wholly impracticable.

The summary of conclusions by these parties was:

I. "The seaboard exporter and the interior exporter should have the same inland rate.

II. "This equality of rate is best secured by making through rates to foreign ports, by the addition of current ocean rates to the fixed inland rate, which latter is charged to the seaboard exporter.

III. "This inland rate on export freight can, under exceptional and justifiable conditions, differ from the domestic tariff rate to the seaboard.

IV. "The separation of 'through rates' to foreign ports from the inland rates to the seaboard, by combination with ocean lines, tends to demoralization and to unjust discrimination; as a system, is wholly impracticable, and, if adopted generally, would bring great injury to our foreign commerce.

V. "If the inland domestic tariff, or at least the inland rate charged to the seaboard exporter, forms the basis of through export rates, the publicity required by the Commissioners' export circular of March 8th, 1888, will enable the seaboard interests to know just what the inland rate or proportion is, to discover any discrimination, and to demand justification or correction."

For the Pennsylvania Railroad Company it was contended that a fair reading of the Act to regulate commerce does not contemplate a division of through export rates, and certainly not a publication of them as part of the publication of the rate itself. But if the power exists to require this it ought not to be exercised for the following among other reasons:

“(a) The action of the Canada lines, prevailing for years previous to the passage of the Interstate Law, in making through rates to Europe from points in the interior of the United States, *via* the ports of Boston, Portland, Montreal and Quebec, which were, as we understand it, treated independently of their domestic rates from western points to the seaboards proper, and divided with the ocean carriers upon a percentage basis.

“(b) The fact that the city of Boston was the only eastern port having the advantage of two rates upon lines traversing a portion of the United States, one domestic, the other export.

“(c) The export traffic, whilst being a very small portion of the whole to be moved by the lines running through the territory of the West and South, involves the movement of the surplus production of grain, provisions, oil cake, tobacco, cotton and flour—the six articles that cover about all the export trade.

“(d) The fact that under the principle now prevailing, and which has prevailed except during the short period between November, 1887, and February, 1888, the ports of Philadelphia and Baltimore are placed at a disadvantage in the fact that they do not enjoy as much and as spirited ocean competition as the city of New York.

“(e) The desire to create continuous lines from points in the United States to points in Europe, partly by rail and partly by water, which would place the whole rate, ocean as well as rail, under the jurisdiction of the Commission, and would guarantee to a shipper in the West or South the

advantages of such continuous lines, without subjecting his property to assessment or delay of any kind *en route*.

“(f) The belief that it would be impossible for the Commission to legislate upon the inland proportion of such through rates, for the reason that the ocean charges from all ports fluctuate so suddenly and so widely, owing to the abundance or scarcity of unoccupied ships at the various ports at the same time, thus causing the inland proportions of the through rates to suddenly and violently fluctuate also.

“(g) The belief that the failure of the rail transportation companies between the West, South and East to make a different rate per mile upon export business than that made upon domestic business would result either in an absolute loss of the surplus production or the shipment of it by other routes; it being understood, of course, that this surplus has to meet the competition of the world in foreign ports.

“(h) The present rate on grain from Chicago to New York is 25 cents per hundred pounds, five dollars per ton for one thousand miles, or about five mills per ton per mile. It is urged that the Commission should first decide as to whether that rate is in itself fair and reasonable, in consideration of the service performed. If, in its judgment, it is fair and equitable, then the surplus production of the western and southern States should be allowed to seek the markets of the world, always providing that the aggregate charge for the long haul should not be less than the charge for the short, over any portion of the same route, in the same direction.”

Briefs in support of the same positions were also filed in behalf of the Associated Millers and the Chamber of Commerce of Minneapolis, and the Indianapolis Millers' Association.

The arguments of the leading contestants have been set forth at large to give the advocates of the rival plans urged for approval the benefit of their own forms of statement. Both carriers and shippers are to some extent divided as well

in respect to the intent of the law as to the principles of transportation that should govern, and the pronounced discordance of views as regards the law indicates the difficulties that surround the subject.

Two distinct theories, as is seen, are advanced, involving radically different interpretations of the statute and dissimilar systems of rates for home traffic and for foreign traffic, or, more precisely, for inter-territorial traffic from an interior point to the seaboard, even though subsequently exported, and like traffic consigned directly to a foreign country beyond the ocean.

The contention of the complainants and of the carriers and others who are in general accord with them, is that for all the purposes of rate-making by inland carriers a seaport of transshipment of property transported from an interior point must be deemed the terminus of carriage, and that the inland rate upon such property consigned abroad and requiring ocean carriage must be identical with the rate charged contemporaneously for the transportation of like property to consignees at the same seaport for either local sale or for subsequent export, and therefore, when the inland proportion of a through rate to a foreign country is less than the rate from the same point of origin to the port of transshipment upon like property, the proportion of the export rate for inland carriage to the extent of such difference is unjustly discriminating and illegal.

The converse of this position is urged as the other theory and it is insisted that if the aggregate through rate to a foreign country is fair and equitable a disparity between the domestic rate and the inland proportion of such through rate is not unlawful, provided the total through rate is not less than the charge for a part of the distance over the same route in the same direction; that the domestic dealer or consumer is not harmed, and that on grounds of public policy these dual methods are valuable if not essential to the commerce of the country.

A wide field of inquiry and discussion is opened up in the consideration of these questions. They affect in a greater or less degree the whole interstate and foreign traffic of the

country, and are invested, therefore, with a measure of national importance.

Doubtless more than common and perhaps exaggerated importance is attached to them by particular transportation lines and particular localities for reasons supposed to be peculiar and to have controlling weight, but the questions have broader scope than the assumed special interests of towns, whether at the seaboard or in the interior, or the exceptional advantages of a transportation line, and they can only be justly determined with reference to carriers as a body, and to the rights and interests of producers, dealers and transporters wherever located. The regulations of commerce are intended by the Act to be general and for the common and equal benefit of all the interests to which they relate wherever the jurisdiction of the Government extends. Injustice in various forms is specifically defined and carriers are forbidden to practice it. They are also required to make public their rates and charges that the information they furnish may be general and impartial, and to carry all traffic at the published rates. These provisions, it is contended, are not inconsistent with two simultaneous sets of rates for the same carrier, one a fixed and public rate from an interior point to a seaport for the transportation of property to be sold at the seaport or subsequently exported, and the other an unspecified and unpublished lower rate, changing perhaps daily, or with the successive hours of the same day, for the contemporaneous transportation of like property, possibly in the same train, over exactly the same line, charged with the same terminal expenses, when the property is destined for immediate shipment across the ocean.

This discrimination is claimed to be justified by considerations of public policy. The surplus products of the country must seek foreign markets, and it is said that carriers should be at liberty to make and modify rates to enable these products to reach the markets of Europe in successful competition with like products of other countries. No proof was given in support of the assumption that conditions exist requiring the discriminations claimed to be necessary for these purposes.

Low general rates are not the subject of complaint. Carriers are not forbidden, but are expected, to make their rates as low as they can afford to serve the public without injury to themselves. Every legitimate reduction of charges is in the interest of the public. Apart from the law equitable business considerations would seem to have force, that while carriers may make their through export rates as low as they think the exigencies of the markets and of competition through Canadian channels may require, they should give the same inland rates to the exporter who handles his own traffic at the seaboard at no additional expense to the carrier.

The complaint is against a reduction on a part of the traffic to the seaboard which is claimed to be prejudicial to the other and greater part, and without facts to justify it.

With regard to competition in foreign markets other things are of importance besides rates, and perhaps of equal importance. Among these are the abundance of diminution of supply—the quality of the products, and the operations of dealers or combinations of dealers in acquiring control of commodities and withholding or hastening their shipment. The other conditions are more or less influential, and rates, though of obvious and conceded importance, are not alone controlling.

The contention that a more flexible and lower rate to the seaboard for direct exports is needed for the surplus of the country, in order to stimulate the prosperity of its newer portions, is opposed by the historical facts of transportation and the progress of the development and growth of the country generally. Through many years of unexampled and substantially corresponding advancement in population, wealth and general prosperity at the seaboard and in other portions, the productions that enter into commerce have been generally moved on rates that made no distinction between consignments to the seaboard and abroad, without apparent advantages or disadvantages to geographical location. Cities at the seaboard, as the natural outlets and inlets of commerce, have advanced with amazing pace, while at the same time what was once the frontier a thousand or two thousand miles

from the coast has disappeared, and wilderness and waste places have been transformed into fruitful fields and populous towns that are great centers of varied business activities and abreast with the elder towns in the features of progressive civilization.

The theory of a necessary disparity between rates on transportation terminating at the seaboard and like transportation extended across the ocean is not supported, therefore, by the evidence in the case or by the general facts of experience.

The legal question whether under the statute a difference in rates for the contemporaneous inland carriage from an interior point to the seaboard can be justified by the circumstance of direct destination across the ocean, is one of vital importance. A decision of that question, declaring a rule applicable to all ports, is, however, not imperative in the present case. The practicability of an exceptional rule for through exports, both as a feasible method for inland carriers generally, and for purposes of regulation under the Act, as well as its justice, are obviously at the foundation of the question, and in these respects the objections to its use at the port of New York are too serious to be disregarded.

The law applicable to the question under consideration was little discussed before the Commission on the part of the defendants, but the case was treated on their part almost exclusively as one of practical policy in making transportation rates involving ocean carriage, and as the carriers have been mainly concerned with its practical difficulties it is natural that they should present that phase of it most prominently. It is not a matter of dispute whether through foreign rates should be made. Substantially no difference of opinion exists on that point. Carriers and dealers concur that they are desirable, and that the export business from the interior is simplified and subserved by a system of through rates that is practicable and affords some guaranty of uniformity and stability. Through rates have been made for a score of years and more, and various plans have been tried to find a satisfactory method and prevent frequent disturbances and confusion. The general rule, and the one to which a return has been made after every other experiment,

has been to make the through rate by adding to the inland tariff rate to the seaboard the current ocean rate at the time. This rule preserves to the inland carrier its published rate, and makes no discrimination between shippers, and has therefore been found better for the interests of both.

The case presented and necessary to be decided relates to the business at and through the port of New York. It involves, however, necessarily the business at the various Atlantic seaports from Baltimore, Maryland, to Portland, Maine, and Montreal, Canada. The conditions at these various ports, though not identical, are so similar that the various competing rail lines, all deriving their traffic, mostly of the same character, from the same general territory, have found it expedient for a long time to equalize their rates to these different seaports by mutual agreement upon a system of concessions or differentials at certain ports, that were thought to be equitable in view of the conditions at those ports. This adjustment the carriers interested have professed to respect, and claim to have nominally, at least, maintained. The importance of adhering to some proper and lawful arrangements in order to maintain fair rates and to prevent demoralization of business, is obvious enough to all, and fully understood by the carriers. The provisions of the Act requiring carriers to publish their tariffs, and to adhere to established schedule rates, added the obligation of legal duty to the voluntary agreements previously relied on. The stability intended to be given by the law to all inland rates, and which is deemed of such importance that advances or reductions are prohibited under severe penalties except in compliance with specified conditions, is no less important and desirable upon export traffic, as well to producers and dealers, as to the carriers themselves. But this involves conditions of ocean carriage that the rail carriers have struggled with in vain for years, and which are practically beyond the reach of legislation, if attempted to be regulated at all. Experience has shown that the only practical control over ocean carriage results from stable inland rates, and that ocean rates, like all other incidents of commerce, adjust themselves to fixed conditions. Ocean carriers, like inland

carriers, when they can not arbitrarily determine the rates they will charge, are likely to act on the ordinary principle of accepting the best obtainable rates, if the business is regarded as desirable.

It is claimed by all the lines made defendants in this proceeding that, since the promulgation of the order of the Commission of March 8th, 1888, they have complied with that order both as to the publication of their export tariffs and the observance of the inland rates upon the traffic. Their testimony is also uniform that there are no inherent or practical difficulties in complying with that order. The propriety of the order is not questioned, but it has been supposed, and circumstances give color to the supposition, that the order has not been fully respected at all times, but that some of the lines, for purposes of their own, have made use of practices to give secret reductions from their established rates. Whatever traffic disturbances have occurred have arisen from causes extraneous to the order, and came from breaches of its requirements. They are traceable to wrongful acts of carriers themselves impelled by a desire for business, and impatient of the restraints of law.

The export commerce at the port of New York and the related ports whose inland rates are based on New York, for the calendar year 1888, as shown by the statistics officially furnished by the Government, was as follows:

PORTS.	VALUE OF EXPORTS.
Baltimore.....	\$45,114,613
Boston.....	59,379,375
New York.....	299,895,853
Philadelphia.....	28,028,798
Portland.....	1,482,133

The flour and grain exported through the North Atlantic seaports, including Montreal, during the calendar year 1888, expressed in bushels, was 91,077,038; for the two preceding years the exports of the same products from the same ports were: In 1886, 150,383,499 bushels, and in 1887, 154,209,915. The percentages exported through Montreal during these three years were as follows: In 1886, 13.7 per cent.; in 1887,

11.9, and in 1888, 11.01. For the ten years preceding 1886 the variation in the percentage of exports through Montreal averaged about one per cent.

The total exports of American merchandise from the same ports during the fiscal year ending June 30th, 1888, show a much smaller percentage exported through Montreal. The value of such products, as appears from figures furnished by the United States and Canadian Governments, was \$444,428,189, and of this amount only \$12,713,290, or 2.8 per cent., went through Montreal. The statistics for previous years show even smaller percentages.

The statistics quoted convey only an indefinite idea of the traffic carried to the different seaports by common carriers subject to regulation under the statute. They represent aggregate exports of merchandise to foreign countries from the respective ports, and include that produced at the ports, that brought wholly by water, that brought by rail, and all varieties of traffic. The exports on through bills from interior points embrace only comparatively few leading articles. These are chiefly grain, flour, meal, meats, provisions, lard, tallow, canned goods, cotton, tobacco, oil cake and live stock. Exact proportions of the property carried by rail consigned locally to the ports and subsequently exported, and that which passes through the ports on direct foreign consignments are not at hand in any complete form, but only to a partial extent. Approximately, however, the through consignments are much the smaller in amount, and do not exceed one-third of the rail carriage, in some instances being more and in others much less. It is on this limited portion of the export traffic that the claim is founded for a method of making rates that affects the transportation and the market value of much the greater volume of like property, and prejudices the investments and business interests of large bodies of citizens.

In view of the very large export business of the country, and the various interests engaged in it, the questions that naturally arise, are: Is it the intention of the law to regulate equally the inland carriage of property whether consigned to the seaboard or across the ocean? Or is its intention that

the fact of a foreign consignment shall exempt inland transportation from the operation of the Act, except only that the charge for a haul of a thousand miles from Chicago to New York shall not be greater than a charge for the same haul with three thousand miles of ocean carriage added, when no difference in cost of inland service or terminal expense exists in either case? Practically, can two distinct methods co-exist and be enforced without friction and disorder, by one of which tariff schedules must be published and adhered to by the carriers, and by the other of which schedules, if published at all, need not show the inland rate, but only the aggregate through rate?

Generalizations applicable to domestic transportation, such as decrease of charge per mile in the ratio of distance, competition of carriers not subject to the law, and even broader considerations relating to competition in foreign markets or what are called the markets of the world, do not aid the interpretation of a domestic statute, nor so enlarge its application as to make it affective upon the ocean, and, by reflex influence, authorize different standards for internal rates.

The essential physical fact can not be changed that inland transportation and ocean transportation are distinct in their nature, and though a common charge may be made for both they are none the less separate in character, and where one gross rate is charged for both it will as a rule, usually be found to involve percentages or estimated proportions for each.

Nor is the carriage always continuous in the matter of time. It is not uncommon for a through consignment to wait several days or a month or more at the port of New York for ocean carriage.

The general facts relating to the business at New York, and that preceded this complaint, are as follows:

On November 4th, 1887, the Trunk Line Joint Committee, so-called, adopted the following rules with reference to export rates:

“That substantially the basis for making through export freight rates from Chicago be : To add to the actual inland

all rail tariff rates to each and all the different seaboard export cities the different ocean steam quotations thence to the foreign ports to which it may be from time to time agreed to issue through rates upon the leading articles agreed to be specified in the tariff.

“The average result thus obtained, barring fractions, to determine the uniform through rates in cents per hundred pounds *via* all ports to each foreign destination.”

These rules were in force until February 20th, 1888, when they were abrogated and the former method restored.

It was shown that while the rules referred to prevailed contracts were made by the rail carriers with shippers in the interior for a through rate from the point of shipment to the point of destination covering both the inland and ocean transportation, and that this rate was sometimes less than the established inland rate to the seaboard.

It was also shown that under this system ocean rates largely advanced, that inland carriers were not able to maintain uniform inland rates, but were sometimes required to pay fifty per cent. of the through rate to the ocean carrier, and that usually there was a discrepancy between their proportion of the export rate and their domestic rate of ten cents a hundred pounds at New York and eight cents at Philadelphia. The vessels used for ocean carriage, being principally and most of them wholly owned abroad, are independent of the inland carriers, and under such a system, fix their own charges. One effect of contracts for through rates was to deprive inland carriers of the control of their own inland rates on export business.

Other effects of the system in respect to rebates to shippers were indicated, but rather as probabilities or inferences than as ascertained facts.

The irregularities and discriminations in the export rates under the rules put in force November 4th, 1887, and the complaints to which they gave rise, were the occasion for the order made by the Commission on the 8th of March, 1888, requiring export tariffs to be made public and to show the charge for inland transportation to the seaboard when defi-

nitely fixed, and when the export rate is a gross sum to show what part is allowed to the carrier for inland transportation to the point of export by sea.

The object of this order was to check the unjust discriminations of which general complaint had been made.

Prior to this order, however, on the 11th of February, 1888, the Trunk Line Executive Committee resolved that the system in operation from the 4th of November preceding, of making through export tariffs, be discontinued, and that thereafter the rates on export traffic be the same as the inland tariffs plus the ocean rates current from time to time; and this resolution became operative on the 20th of February.

The carriers of the Trunk Line Association were influenced to abandon the system under which the export business had been governed from November 4th by a conviction on the part of most of them of its impracticability and a sense of the unjust discriminations for which it was a cover. This experiment was, however, only a repetition of two preceding trials and rejections of substantially the same expedient. It had a trial of several months' duration in 1877, and, according to the testimony taken before the Hepburn Committee of the New York Legislature in 1879, the demoralization was so extensive that in July, 1877, it was abandoned and the normal method of adding the current ocean rate to the fixed inland rate resumed.

In January, 1880, another attempt was made to put in force a system of through export rates, and a Rate Committee was organized for the purpose. The scheme was, in substance, that the committee should have power to make through rates from common interior points of shipment to foreign ports, which rates should become the uniform and established rates *via* all the seaboard ports of the Trunk Lines; the rates to be quoted daily, or as often as necessary, to the agent at common points, and given to all the roads; the committee to have power to adopt uniform through bills of lading so framed as to give the carriers the right to forward the freight by any road, line, route or port. Notice was given that the plan would be enforced, but strenuous objections were made

to it by western shippers, and it was abandoned before it was put in execution.

However plausible the theory of through export rates not founded on a fixed inland rate may appear, in practice it has been found impracticable. The troublesome factor in every instance, the element of confusion and demoralization, is the ocean carriage. If the domestic carriers were generally owners of the vessels that carry the freight, with no independent competitors on the ocean, a very different condition might exist. But they are not. Our exports are mainly carried in vessels owned abroad and sailing under foreign flags. They are not within the jurisdiction of our laws, like our inland carriers, and there are difficulties in applying to them the provisions of the Act to regulate commerce. They have power, therefore, and exercise it, as the testimony abundantly shows, to dictate their own terms in making a through rate, and among the results that follow are higher divisions of the through rate for ocean carriage, fluctuating inland rates, discriminations between the inland and export charges, and the effect on prices in foreign markets of lower through rates.

There are other incidental abuses that mostly have their origin in the desire to secure business, and involve to a greater or less degree infractions of law. Consignments of freight on through bills without an arrangement for ocean carriage, resulting in delay at the seaboard, or a higher ocean charge at the expense of the inland rate; or nominal foreign consignments and delivery of the property at the seaboard; or secret subsidies to ocean lines by the inland carriers; and other devices that lead to disorders, are not uncommon practices.

The delays that occur in the transshipment of freight at the seaboard consigned on through foreign bills illustrate the injustice of a through rate not founded on the inland rate. Can any valid or even plausible reason be assigned why shipments on a through rate billed to a foreign country that wait a month or more for ocean carriage at a seaport, should be carried at a less inland rate than a shipment of the same kind of property over the same line consigned at the sea-

board, that waits no longer, and perhaps a shorter time, to cross the ocean?

The work of the inland carrier is completed when he discharges his freight at the seaboard, whether in warehouses, elevators, or on board vessels. His service is identically the same whether the destination is the seaboard or a foreign port, and there is no reason founded on the character of the service for a difference in compensation, or why a fixed charge applicable to both should not exist. Peculiar circumstances may exist at some port why domestic dealers there as well as exporters may acquiesce in a concession to exports not at the same time given to the strictly domestic rate. But independently of such exceptional conditions a fixed inland rate would seem the fair and just rule.

A standard rate from Chicago to New York, uniform both for domestic and foreign consignments, has existed nominally at least for more than eleven years, and was the agreed result of experience and severe contention, as the only practical way by which all the interests involved would be adequately protected. It is in evidence that the recognized importance of reaching foreign markets was a very important element in fixing this rate, and except for this consideration, and water competition by the lakes and Erie Canal, the charge would likely be considerably higher. It is not claimed that the carriers have adhered with unswerving fidelity to the established rate, but, on the contrary, both before and since the Act to regulate commerce, departures, in the form of rebates and cuts, as is charged, have not been uncommon. But these have been willful and wanton violations of an agreed and established rule. There was no element of instability in the conditions beyond the control of the carriers.

The case is very different with ocean rates. There has not been, and can not be in the nature of existing conditions, fixed or permanent ocean rates. It is undoubtedly the fact that "ocean rates do fluctuate, and always have fluctuated, weekly, daily and hourly, even for the same sailing, and evidently from conditions not affecting rail carriers, or affecting them in a less degree."

The testimony illustrates the practical working of the contracts for through rates under the disadvantages of these fluctuations and the absence of any control over them. It shows in substance that when the railroad companies, under the plan of November 4th, 1887, fixed the through rate based on the average of inland and ocean rates, some of the steamship companies increased their rate and asked the railroad company more than the proportion they were to receive of the through rate. Thus, if the inland carriage were twenty-five cents a hundred, and the average ocean carriage ten cents a hundred, the through rate established would be thirty-five cents a hundred. This would be published as a through rate, and the next day, when the rail carrier wished to take any business to a steamship with which no previous understanding existed, the steamship company would demand fifteen cents a hundred for its part of the work, and the railroad company, having guaranteed a through rate of thirty-five cents a hundred, would have to carry the business for less than the average inland proportion on which the rate was originally based.

The extent to which inland rates were affected by the fluctuations in ocean rates is shown by tables in evidence. The established inland tariff from Chicago to New York from January 2d, 1888, to February 11th, on bacon, pork, beef, lard and canned goods, was 33 cents per hundred pounds, and on flour 27½ cents per hundred pounds. The inland proportion of the through rate to Liverpool *via* New York on January 2d was 25.375 cents on bacon, pork and beef, 24.875 on lard and canned goods, and 19.875 on flour. These proportions fluctuated until they fell on February 10th to 17.375 cents on all except flour, and on flour to 14.625, being about half the established rate on the same articles consigned to New York.

As the freight sent across the ocean on a through rate affects the price of all like freight stored or accumulated at the seaboard, the disadvantages of the seaboard exporter under such disparities in the inland rate are evident.

In the testimony statements were produced showing the quantities, in tons, of flour and grain respectively carried to

the cities of New York, Boston, Philadelphia and Baltimore, consigned to those cities and exported, and also the quantities carried through those cities on through bills of lading during certain periods, and are set out in the findings of facts. By these statements the proportions of flour and grain exported on through bills through the several cities named, in comparison with the amount carried to the same cities and subsequently exported were as follows :

From December 1st, 1883, to April 30th, 1884, 46.67 per cent. of flour ; from December 1st, 1887, to April 30th, 1888, 70.50 per cent.

From December 1st, 1883, to April 30th, 1884, 8.51 per cent. of grain ; and from December 1st, 1887, to April 30th, 1888, 13.85 per cent. of grain.

At the city of New York alone the comparisons were as follows :

From December 1st, 1883, to April 30th, 1884, the proportion of flour exported on through bills was 40.65 per cent.; and from December 1st, 1887, to April 30th, 1888, 54.56 per cent.

Of grain the proportion exported on through bills from December 1st, 1883, to April 30th, 1884, was 4.92 per cent.; and the proportion from December 1st, 1887, to April 30th, 1888, was 4.79 per cent.

More complete statements of the exports at New York on local consignments and on through bills show the following comparisons :

Total exports of flour for the year 1886 were 6,052,118 barrels, of which the percentage exported on through bills was 30.38. Total exports of flour for the year 1887 were 6,506,436 barrels, of which the percentage exported on through bill was 29.86.

It is a generally accepted conclusion among those who have given most attention to transportation, that the great fluctuations constantly taking place in ocean rates at different seasons of the year under the ever-changing conditions

of commerce, make it entirely impracticable to vary the inland rates as the ocean rates may vary, and that the plan of equalizing the through rates upon the average sum of ocean and inland rates can never be successfully carried out. But on the other hand the evidence furnished by the statistics of the movements of commerce prove that it is one of the laws of transportation that ocean rates adapt themselves with almost invariable precision to established inland rates. Whatever advantages may be urged in favor of a through foreign rate from interior points not founded on a fixed and public inland tariff rate manifestly can not accrue to the country at large, nor promote the territorial distribution and individuality of business pursuits that are generally regarded as desirable, and conducive to the public welfare. But, on the contrary, the tendency under such a system is more likely to be towards concentrated control or combinations in commerce that may be productive of results prejudicial to individual enterprise and to the public interests.

It is not surprising that, in view of past experience, the great majority of those familiar with transportation questions and practically engaged in transporting products for export, substantially concur with the petitioners with regard to the method of making foreign rates. All the parties to this proceeding whose opinions have been expressed, with one exception, favor that mode, and it is also supported by the testimony. This general coincidence as the mature result of experience, study and practical knowledge of the subject of transportation and of the factors that must be considered in fixing a basis for rates, is a significant and important circumstance. Upon the practical aspects of the question of the proper method of making through foreign rates, the largely preponderating testimony of those directly interested in the business, both as shippers and transporters, is entitled to reasonable weight.

The questions that arise under the Act have to be determined under it as it stands, and the statute should not be impaired, or deprived of its efficiency, by artificial or fanciful construction. If there are any defects or errors in the existing law it is far better that they should be endured for a

time, until proper changes can be made by the legislative body, than that construction should be resorted to for the accomplishment of purposes only to be appropriately attained through legislation. It is certainly not to be expected that the first attempt to regulate by law the immense transportation interests of this country, with such endless diversities in the conditions of transportation, and such great variety in the character of products to be carried, should be complete in all its parts, or free from some provisions that may produce friction, or, to some extent, perhaps, injurious results. Indeed, the wonder is that a statute of such a character, and for such purposes, could have been framed, as a first experiment, with so comparatively few defects.

A general and careful survey of the export business of the country, and the conditions under which it is carried on, through the various ports, seems to warrant certain deductions which largely simplify the question under consideration. These deductions may be summarized as follows :

The proportion of the export trade to which the exceptional rate is sought to be applied is very small in comparison with the general transportation business to the seaboard, and relatively small in proportion to the export business itself.

There is no reason to believe, founded upon any evidence in the case, that foreign markets cannot be profitably reached by our surplus products upon a fixed inland tariff rate to the seaboard with the current ocean rate added, but, on the other hand, there is affirmative evidence that no difficulty has been experienced in reaching those markets advantageously upon a rate so made.

The demand for an exceptional export rate is not shown to be founded upon any necessity of the business, but, as would seem, is urged argumentatively by certain railroads on their own account, and has for its object supposed advantages to particular lines rather than the general interest of the public.

The competition of like products through Canadian ports,

though important in amount, is not shown to involve conditions so peculiar and controlling in their character as to require an exceptional rule for the business in question,—the percentage of exports through Montreal for a period of thirteen years has been very nearly uniform, and whatever irregularities there may be in that competition they are susceptible of correction by appropriate legislation.

The transportation of property from the interior to the seaboard at the same inland rate for the interior exporter and the seaboard exporter produces no injustice to either, and gives neither any advantage over the other, and the competition between interior and seaboard exporters is left to the control of natural forces and natural laws, without artificial helps or hindrances to either, and enterprise and energy may contend on an equal footing for the success to which they are entitled.

To these must be added the general principle that a rule for making rates, like all general rules of business, should be founded upon and adapted to the main proportion or bulk of the business, and not upon an exceptional part of it; and especially should this be the case when a rule based upon the exceptional part would be likely to injuriously affect all the remainder and much greater proportion of the business; and if it be true (which is not conceded, however) that the smaller or exceptional part of the business might to some extent be injured by not giving it a free foot to run as it pleases, it is consistent with sound principles that, if evil results must follow from general rules, it is better that they should apply to the less and not to the greater proportion of the business.

There is much pronounced dissimilarity in the essential conditions of the export business that a general rule for making and publishing rates can not apply without serious injury to any important interest—at least until Congress shall see fit to authorize exceptions. Any practical difficulty in the application of the positive provisions of the law is not to be remedied by construction on the part of the Commission, but is properly a subject for legislative action.

The principle that inland charges to a port of transship-

ment shall be the same for like service though part of the traffic is booked to go beyond the port by sea has long been the rule in England, and is in terms provided for by statute.

A practice having grown up under the Act of 1854 of making through passenger rates by railway and steam vessel beyond the port of transshipment, of which the inland proportion of the railway company was less than the established rate of the same company to the seaport, the Regulation of Railways Act of 1868 enacted that the rate should be equal on the *railway* whether the passenger was destined to the seaport or beyond by steam vessel, and that the ticket should indicate the respective charges by steam vessel and by railway.

And in respect to imports the recent English Act (August 10, 1888) provides (section 27, sub. 2) "that no railway company shall make, nor shall the Court or the Commissioners sustain, any difference in the tolls, rates or charges made for, or any difference in the treatment of home and foreign merchandise in respect of the same or similar services."

Like charges for like inland service is therefore the established rule in England, and the fact that merchandise may be carried by rail to the seaboard for export, or be imported by sea to be carried inland by rail, is not allowed to create an exception to the rule.

The rule applied in England is not a tentative one, but is the result of discussion and experience. It agrees with the method approved by experience in this country. Although our statute does not contain the explicit enactments of the English acts, its general provisions permit the enforcement of a rule supported by so many considerations, and under which it is possible to regulate export rates with some assurance of stability and equality.

The Act to regulate commerce was designed to govern the transportation business of the whole country. Its operation was intended to be beneficial to the public, and its provisions as regards public interests are conservative. It does not attempt to revolutionize business pursuits, but its purpose is to aid legitimate business by requiring justice and impartiality on the part of the transportation agencies that

serve the public. Its chief provisions aim at the extirpation of known abuses, the prevention of an arbitrary use of the powers of carriers to give undue preferences to localities or individuals to the prejudice of others, and proper recognition of the principle that equality is the right of the citizen and the duty of the carrier. It lays down principles of national policy intended to be general in their application, and to secure the enjoyment of the equal rights to which all the citizens of a common country are entitled.

It is clearly essential that the mode of making through inland and ocean rates should be one that is practicable, and at the same time not a cover for discrimination and injustice. It is also reasonably evident that for these purposes, under existing conditions, the fixed inland tariff rate must be the basis of the through rate. No other feasible mode has as yet been devised that so fully assures conformity with the provisions of the law, and that furnishes any positive criterion by which unjust discriminations may be determined and dealt with on a consistent basis.

The Commission had in view these considerations when the order of March 8th, 1888, for the publication of such rates, was promulgated. The authority of the Commission to make such an order was clear and ample. The language of the Act is :

“And in cases where passengers and freight pass over continuous lines or routes operated by more than one common carrier, and the several common carriers operating such lines or routes establish joint tariffs of rates or fares or charges for such continuous lines or routes, copies of such joint tariffs shall also, in like manner, be filed with said Commission. Such joint rates, fares and charges on such continuous lines so filed as aforesaid, shall be made public by such common carriers when directed by said Commission, in so far as may, in the judgment of the Commission, be deemed practicable; and said Commission shall from time to time prescribe the measure of publicity which shall be given to such rates, fares and charges, or to such part of them as it may deem it practicable for such common carriers to publish, and the places in which they shall be published.”

By the amendments made to the Act March 2, 1889, the following provisions were added in respect to advances and reductions in joint rates, the publicity to be given to such advances and reductions, and the duty of observance by carriers of their established joint rates :

“No advance shall be made in joint rates, fares, and charges, shown upon joint tariffs, except after ten days’ notice to the Commission, which shall plainly state the changes proposed to be made in the schedule then in force, and the time when the increased rates, fares or charges will go into effect. No reduction shall be made in joint rates, fares, and charges, except after three days’ notice, to be given to the Commission as is above provided in the case of an advance of joint rates. The Commission may make public such proposed advances, or such reductions, in such manner as may, in its judgment, be deemed practicable, and may prescribe from time to time the measure of publicity which common carriers shall give to advances or reductions in joint tariffs.

“It shall be unlawful for any common carrier, party to any joint tariff, to charge, demand, collect, or receive from any person or persons a greater or less compensation for the transportation of persons or property, or for any services in connection therewith, between any points as to which a joint rate, fare, or charge is named thereon than is specified in the schedule filed with the Commission in force at the time.”

By the enactments quoted from the original Act the duty of carriers to file their joint tariffs of rates, fares or charges for continuous lines or routes over which freight passes, is imperative. The duty is no less imperative to make public such rates, fares and charges when directed by the Commission, and to such extent as the Commission—not the carriers—may deem practicable. The statute also provides that publicity may be required to be given to the whole or a part of such joint rates, fares and charges as in the judgment of the Commission may be deemed practicable. The duty both to file and to publish is imposed by the statute, but the per-

formance of the duty to publish, and the extent of the publicity, are left to the discretion of the Commission under a grant of power without qualifications. This power, like all other powers, is to be exercised reasonably and for the beneficial public purposes contemplated by the Act. The objects of the publication of tariff are to inform the public what rates and charges are made so that all may have the same knowledge for the purposes of their business, and to prevent discriminations and preferences. It is not questioned that internal tariffs for the transportation of property to the seaboard, whether for consumption and distribution there or for subsequent export under an independent arrangement with ocean carriers, should be made public. In these cases the jurisdiction of the Commission to require publication and to give effect to the Act admits of no doubt. When, however, property is consigned directly to a foreign port from an interior point upon a through rate for inland and ocean carriage, it is claimed that the part of such rate accepted by the inland carrier is not to be deemed a rate subject to the same requirements as in the other cases, but that the reasonableness of the aggregate through rate is alone to be dealt with by the Commission. The statute, however, makes no such exception, and the Commission has never intimated that a particular portion of a joint through rate received or participated in by one or more of the carriers forming a part of the line may not be called in question, and its justice or lawfulness determined under the provisions of the Act. There may be cases, as in the case of *The Boston Chamber of Commerce v. Boston & Albany Railroad Co. et al.* (1 I. C. C. Rep., 436), where the contention is with the through rate as an entirety, in which the divisions allotted to different roads are unimportant for the purpose of the case, but it is otherwise with the case in hand. The division of the through rate accepted by the inland carrier is for all practical purposes its rate to the seaboard, and is as fully subject to the provisions of the Act and the jurisdiction of the Commission as a rate terminating at the seaboard. If it were otherwise the law would be ineffectual for a large proportion of the commerce it was intended to regulate, and the immunity of only a fractional

part of the traffic would injuriously affect all of the residue though many times greater in amount. This is one of the considerations that led to the petition in this case.

By the amendments of March 2, 1889, the further duty of notification of advances and reductions, and the maintenance of joint tariffs, render the practice of changing every day, or several times a day, joint through rates, whether wholly inland or partly inland and partly ocean, an impossibility if these provisions of the statute are to be observed at all. The notification of advances and reductions is intended to precede the time when they take effect, and not to follow after the shipment of the property, when the notification is useless. And an advance upon ten days' notice, or a reduction upon three days' notice, is wholly inconsistent with daily or more frequent changes. These provisions are intended to secure stability in rates, and the Commission has no authority to absolve carriers from their observance.

The exact ground of complaint is the alleged discrimination by the inland carriers, who transport wheat, corn, flour, cotton, tobacco, live stock, dressed meats, and other productions of the interior, in favor of dealers who consign their shipments on through bills directly to foreign ports, and against the dealers in like traffic in the seaboard cities who purchase either for local sale or for subsequent export; the consequences being, as claimed, to give foreign purchasers advantages over home dealers, and to establish prices in foreign markets for the entire products exported, and, to some extent, for the domestic sales as well. The fact that discriminations of the nature charged were made during the period mentioned in the complaint, and the extent to which they were carried, appear in the testimony, and have been before noticed. Substantially the charge of the complaint in respect to discrimination is sustained by the evidence, and it was not justified by the circumstances and conditions shown to exist. The discrimination was actual; it was unjust, and therefore unlawful.

The necessary conclusion is that in making and publishing export tariffs, the rate to the seaboard should be specified and should not discriminate against the inland tariff rate

unless justifiable conditions exist for a difference. It is not shown that such conditions exist at New York, and very clearly they do not exist.

The decision of the Commission is that the order of March 8th, 1888, stand and continue in force as promulgated, and that the several defendants cease and desist from unjustly discriminating in their rates and charges for inland transportation, between traffic consigned on through bills to foreign ports from interior points, and like traffic consigned to the seaboard.

The disposition of this case is confined mainly to the practical aspects of the matters involved. It has not been considered necessary to critically discuss the question whether the Act may not be so interpreted as to apply its provisions to ocean carriage, and to authorize through rates to foreign countries independently of the established inland rate. In the judgment of the Commission the addition of current ocean rates to the fixed inland tariff rate is the only practicable method for the export business as a whole, and the only mode to which the regulations of the Act can be effectively applied, especially since the amendments of March 2, 1889.

The Commission believes the policy of this method of making export rates will best protect all interests, and leave no substantial ground upon which to base any complaint for injustice. The welfare of the great body of producers, dealers and carriers will, it is believed, be best promoted by an adherence to this policy, leaving to the wisdom of Congress the question whether the policy should be permanent, or to provide by changes in the statute for whatever exceptional or different methods may be deemed expedient or necessary.

No. 184.

GEORGE RICE *v.* THE CINCINNATI, WASHINGTON & BALTIMORE RAILROAD COMPANY; THE CINCINNATI, INDIANAPOLIS, ST. LOUIS & CHICAGO RAILWAY COMPANY; THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY; THE UNION PACIFIC RAILWAY COMPANY; AND THE CENTRAL PACIFIC RAILROAD COMPANY.

No. 185.

GEORGE RICE *v.* THE CINCINNATI, WASHINGTON & BALTIMORE RAILROAD COMPANY; THE OHIO & MISSISSIPPI RAILWAY COMPANY; THE ST. LOUIS & SAN FRANCISCO RAILWAY COMPANY; THE ATCHISON, TOPEKA & SANTA FE RAILROAD COMPANY; THE ATLANTIC & PACIFIC RAILROAD COMPANY, AND THE SOUTHERN PACIFIC COMPANY.

No. 194.

GEORGE RICE *v.* THE LOUISVILLE & NASHVILLE RAILROAD COMPANY.

IN THE MATTER OF THE APPLICATION OF PETITIONER FOR
SUBPÆNAS *duces tecum*.

Decided July 20, 1889. Opinion Filed, September 20, 1889.

APPLICATION FOR SUBPÆNAS DUCES TECUM FOR

The production of books, contracts, vouchers, accounts and papers, by

JOHN D. ROCKEFELLER,

GEORGE H. VILAS,

JOHN BUSHNELL,

AMBROSE MCGREGOR,

M. A. ROBINSON,

J. E. TERRILL,

R. M. FRAZIER, General Freight Agent;

THOMAS L. KIMBALL, General Manager;
 A. S. VAN KURAN, Freight Auditor;
 J. A. MUNROE, General Freight Agent;
 W. F. WHITE, Traffic Manager;
 S. B. HYNES, General Freight Agent;
 H. C. CLEMENTS, Auditor;
 THE CENTRAL PACIFIC RAILROAD COMPANY;
 THE SOUTHERN PACIFIC RAILROAD COMPANY;
 MILTON H. SMITH, Vice-President;
 JOHN M. CULP, General Freight Agent;
 J. H. FLAGLER, President American Cotton Oil Trust;
 J. C. MOSS, Treasurer " " "
 ROBERT F. MUNROE, Auditor " " "
 GEORGE H. WEBSTER, of Armour & Company;
 LYMAN KLAPP, President Union Oil Company.

1. In laying down rules upon the subject of what an application shall contain for the compulsory production of books, papers, tariffs, contracts, agreements, and documents relating to any matter under investigation, the Commission is governed by the provisions of the Act to regulate commerce and the objects and purposes of this statute, but in connection with these will also consider the practice in the courts of the United States, as well as the rules prescribed by Federal statutes in proceedings which seem to be most nearly analogous to proceedings in which such application to the Commission is made.
2. In proceedings between parties, when such an application is made to the Commission, to compel parties who are not engaged as carriers in interstate commerce, or others who are strangers to the proceeding, to produce books, papers, and documents, the application should be in writing, addressed to the Commission, and should specify, as nearly as may be, the books, papers, or documents for the production of which process is desired, and be accompanied by an affidavit that the books, papers, or documents described are in the possession of the witness or under his control, and should set forth facts which make a *prima facie* case that these contain evidence that is material and necessary to the party seeking their production in the pending proceeding; and in such a case the *prima facie* showing that what is required to be produced will be legal evidence for the party demanding it ought to be very clear and full.
3. Where the application is made to compel one who is a party to the proceeding and who is a carrier engaged in interstate commerce to produce its books for the purposes of evidence in a pending proceeding, it is sufficient for the application to indicate in writing in a general way what books of the carrier should be produced, and that there is reason to believe, and that the applicant does believe, that in the course of the hearing they will become of service, on account of the light they will throw upon the questions in controversy in the proceeding and as an

evidence of good faith, in making the application, the applicant should make an affidavit, as part of the application, that such application is made in good faith, and not for the purpose of vexing or harrassing the defendant; and upon such a showing, as a general rule, the process should issue, unless the number of books called for should be so large, or from other exceptional circumstances, the Commission should order the testimony to be taken at such place as would avoid oppression in producing the books at a far-distant hearing, and expedite the progress of the investigation.

4. The difference that exists in what should be a *prima facie* showing for compulsory process for the production of books, papers, and documents as between parties not engaged as carriers in interstate commerce, or strangers to the proceeding, on the one hand, and on the other hand, carriers who are engaged in interstate commerce, is one that is very manifest. The books of carriers engaged in interstate commerce, whether made up from shipping-tickets, way-bills, expense bills, or otherwise, are supposed to give the exact particulars of the consignment, showing the weight, rate, and amount of charges to be paid to the company's agent, and are put in this enduring form at the time of the consignment as part of the transaction upon rates that the law requires to be open and public, and thus they give a history of the details of the transaction, and are in the nature of semi-public records. Shippers, consignees, and even the public, may well have an interest, under certain circumstances, in the evidence these records afford as to rates, charges, facilities furnished, and the general movements of freight. The books of strangers to the proceeding, and of parties not engaged as carriers in interstate commerce, do not necessarily occupy any such relation to these transactions, though there may possibly be such a showing as would make them material and competent evidence in proceedings in which these transactions come into controversy.
5. There are several modes of procedure by which the inconvenience to the defendant carriers of producing books, and the delay and labor of going over their entries, might be avoided by petitioner. For example: If one or more witnesses should be subpoenaed from the different companies proceeded against, and a notice should be served with the subpoena requiring the witnesses to furnish the published rates and tariffs of such company, for a specified period, and also requiring them to furnish statements of the actual charges made and car facilities furnished during such period, to the Standard Oil Trust and the others named in the application, if different from the published tariffs and schedules, it would probably be sufficient for all the purposes of these proceedings; or if the parties would take depositions by consent in advance of the hearing, it would answer the same purpose.
6. In proceedings like these it is enough to show the rates actually charged, if there are or have been any such to certain shippers or consignees.

different from the published tariff rates, or the preferential facilities, if any such, furnished by the defendants to some shippers or consignees, and not to others, or the comparative rates on the different commodities named in the complaints, and from and to designated points. Innumerable shipments, with all their minuteness of detail over the various lines that were made for many years before the Act to regulate commerce took effect, as well as since that date, and the names of the consignors and consignees at so many different points, through these long periods of time, seems to be immaterial. It appears to be sufficient for all the purposes of these cases to show the rates published, the rates actually charged, and the facilities furnished from and to designated points since the Act to regulate commerce went into effect, and for whatever light these may throw upon the question of the reasonableness and justice of the rates, if any, and the fairness of the facilities afforded by way of comparison, what these were for a reasonable time; for example, for a period of twelve months before the Act to regulate commerce went into effect.

- 7, The books of the defendant carriers as to rates charged, facilities furnished, and general movements of freight, being in the nature of semi-public records, to any extent that they can fairly and justly save time, labor or expense to complainant, or to their companies, by giving to him in response to any calls he may make, statements of facts shown by their books, records, or files which may probably have importance on the hearing, the officers and agents of the defendant carriers under the direction of defendants, ought to give such statements, and ought to do so as promptly as may be found reasonably practicable.

Much unnecessary controversy, inconvenience, and delay might well be avoided in the first instance, as well as in subsequent stages of proceedings, if carriers would exhibit, without technical objection, what their books show in reference to a transaction in question to any one who calls for the information in good faith, believing, though perhaps erroneously, that it is, or may be, important to his interests, and when the application is seasonably and properly made, with a due regard for the convenience of the carriers' agents and officers; and the instances are numerous in which it would put an end to the controversy, and in many others that the party would not then trouble the carrier for the production of the books.

8. As the application in these cases does not conform to the rules herein stated in reference to making a *prima facie* showing for the compulsory production of the books, papers, and documents, either as against the defendant carriers or those who are strangers to these proceedings, the relief it seeks can not now be granted, and for the present must be denied; but this does not preclude the petitioner from renewing his application, provided, in doing so, he conforms to the rules indicated.

Hon. Franklin B. Gowen, for the application.

REPORT AND OPINION OF THE COMMISSION.

BRAGG, *Commissioner* :

These several proceedings being at issue on petitions and answers and set for hearing, but no testimony taken, application is now made by the complainant for subpoenas *duces tecum* to a considerable number of witnesses, requiring them to produce before the Commission at the hearing a large variety of books, vouchers, ledgers, accounts and other papers covering current business transactions in the shipments of freight over a large portion of the country for long periods of time, showing the methods of doing the business and rates charged and received by the defendant carriers on these shipments direct, and other freight brought back as return loads on the same cars, as well as the mileage paid as rental for the use of tank and combination cars loaded or returning empty where that was done, in all the infinite variety of these transactions. Or, in lieu of producing all these books, vouchers, ledgers, accounts and other papers, that the witnesses furnish statements embracing all these transactions in all their details.

This application is as follows:

“ *To the Interstate Commerce Commission :*

“The complainant, by his counsel, Franklin B. Gowen, respectfully requests the Commission to order subpoenas *duces tecum* in the above cases, as follows:

“To John D. Rockefeller, 26 Broadway, New York;

“To George H. Vilas, 26 Broadway, New York;

“To John Bushnell, 26 Broadway, New York;

“To Ambrose McGregor, 26 Broadway, New York; with the following *duces tecum* :

“And bring with you any book, record, or statement showing the names and amounts of capital of all corporations, firms, and associations in which the Standard Oil Trust has any interest;

“Also all books, accounts, or statements showing all amounts and kinds of petroleum and its products, cotton-

seed oil and turpentine, shipped since April 4, 1887, to date of hearing, by the Standard Oil Company of Ohio, and other corporations, firms or associations affiliated to the Standard Oil Trust to Pacific Coast terminal points and to intermediate Pacific Coast common points, and other points west of the Mississippi and Missouri rivers, with all shipments from Pacific Coast terminal points, to all points or stations eastward, showing dates and amounts of each shipment and net rates paid on the same ;

“ Also all bills, vouchers or receipts showing payments and rates for shipment of petroleum or its products to Pacific Coast common or terminal points, for five years prior to April 4, 1887, with statement of any car mileage paid for return of empty cars, if any, during said five years ;

“ Also all bills, statements, accounts, vouchers and receipts for payments of freight charges on above-named shipments, and all books, accounts, receipts or vouchers for any or all mileage rebates or allowances on account of the freight charges above named ;

“ Also all shipments by water to Pacific Coast terminal points since April 4, 1887, showing dates and amounts of each shipment and by what lines or vessels ;

“ Also the contract for purchase or control of the patent right for combination tank and box car.

“ *Note.* (Please note that a statement containing the facts asked for extracted from the books or other papers will answer all purposes, without the production of all original papers and books).

“ To M. A. Robinson, 26 Broadway, New York ;

“ To J. E. Terrill, 26 Broadway, New York ;

“ And bring with you a statement or list of all tank cars, and combination box and tank cars, and other cars of the Union Tank Line, and including all such kinds of cars in use by all corporations, firms or associations affiliated or connected with the Standard Oil Trust, if under any other name, together with the weights and numbers of each, with the separate weights of the tanks in the combination cars, and of the cylinders of the tank cars ;

“ Also all books, accounts or statements showing the rates and the total mileage payments received by the Union Tank Line from railroad or other transportation companies, for the year ending April 1, 1888, and the year ending April 1, 1889, and also showing separately the amounts for mileage payments received for each of the said two years on the combination cars from the Pacific Coast lines ;

“ Also all books, accounts or statements showing the rates and the amount of rentals thus received from each and every source for the use of the Union Tank Line or other tank cars under your control and management in which cotton seed oil and turpentine has been transported during each of the said two years aforesaid ;

“ Also all books, accounts or statements showing the number of barrels of petroleum and its products carried by all the cars of the Union Tank Line for each of the two years aforesaid, and the number of barrels or other kind of loading other than petroleum and its products carried during each of the said two years.

“ *Note.* (Please note that a statement containing the facts asked for extracted from the books or other papers will answer all purposes, without the production of all original papers and books.)

“ In the two cases of the Cincinnati, Washington & Baltimore Railroad Company and others—

“ To R. M. Frazier, Cincinnati, Ohio.

“ And bring with you all books, accounts or statements showing all shipments of petroleum and its products in car lots over the Cincinnati, Washington & Baltimore Railroad to Pacific Coast terminals and intermediate Pacific Coast common points, and all other points on the Union Pacific Railway and the Atchison, Topeka & Santa Fe Railroad, and including Cincinnati, St. Louis, Louisville and Chicago, since April 4th, 1887, with dates, consignor, consignee, amounts, rates of each shipment, with all rebates, drawbacks or allowances paid or allowed in any manner by reason of each shipment—also to include cotton seed oil and turpentine, together with statement showing dates, rates, payee and amounts paid,

as car mileage or otherwise, on loaded or empty tank cars, separately specified, and to include east and west bound oil traffic, and also all amounts received for the transportation of each and every tank car which has carried the above freight, with dates and rates;

“Also all terminal or other charges paid, allowed or deducted in any manner, shape or form on oil shipments;

“Also to bring with you an original sample voucher 10 days apart from April 4th, 1887, showing how and in what manner above shipments were billed, and to include as above a voucher showing how the freights were paid.

“*Note.* (Please note that a statement containing the facts asked for extracted from the books or other papers will answer all purposes, without the production of all original papers and books.)

“To Thomas L. Kimball, Gen. Man., Union Pacific R’y Co., Omaha, Neb.

“To A. S. Van Kuran, Freight Aud., Union Pacific R’y Co., Omaha, Neb.

“To J. A. Munroe, Gen. Fr’t Agent, Union Pacific R’y Co., Omaha, Neb.

“And bring with you all books, accounts or statements showing all shipments of petroleum and its products in car lots over the Union Pacific Railway to Pacific Coast terminal points, and intermediate Pacific Coast common points, and all points on the Union Pacific Railway west of the Missouri River, since April 4th, 1887, with dates, consignor, consignee, amounts, rates of each shipment, with all rebates, drawbacks, or allowances paid or allowed in any manner by reason of each shipment; also to include cotton seed oil and turpentine north-bound, together with statement showing dates, rates, payee and amounts paid, as car mileage or otherwise, on loaded or empty tank cars, separately specified, and to include east and west bound oil traffic, and also all amounts received for the transportation of each and every tank car which has carried the above freight, with dates and rates;

“Also all terminal or other charges paid, allowed, or deducted in any manner, shape, or form on oil shipments;

“Also to bring with you an original sample voucher 10 days apart from April 4th, 1887, showing how and in what manner above shipments were billed, and to include a voucher as above showing how the freights were paid.

“*Note.* (Please note that a statement containing the facts asked for extracted from the books or other papers will answer all purposes, without the production of all original papers and books.)

“To W. F. White, Traf. Man., Atch., T. & S. F. R. R. Co., Topeka, Kan.

“To S. B. Hynes, G. F. Agt., Atch., T. & S. F. R. R. Co., Topeka, Kan.

“To H. C. Clements, Auditor, Atch., T. & S. F. R. R. Co., Topeka, Kan.

“And bring with you all books, accounts or statements showing all shipments of petroleum and its products, cotton seed oil, and turpentine, in car lots, over the Atchison, Topeka & Santa Fe Railroad to Pacific Coast terminals and intermediate Pacific Coast common points, and all stations on the Southern Pacific Line and Atlantic & Pacific Railroad, also all stations west of Kansas City, since April 4th, 1887, to date of hearing, with dates, consignor, consignee, amounts, rates of each shipment, and to include number and weight of contents of each tank car, with all rebates, drawbacks, or allowances paid or allowed in any manner by reason of each shipment, together with statement showing dates, rates, payee and amounts paid, as car mileage or otherwise, on loaded or empty tank cars, separately specified, and to include east and west bound oil traffic, also to include all amounts received for the transportation of each and every empty tank car which has carried the above freight, with dates and rates;

“Also all terminal or other charges paid, allowed or deducted in any manner, shape or form on said shipments;

“Also to bring with you original sample vouchers, one in every ten days from April 4th, 1887, to date of hearing, showing how and in what manner above shipments were billed, and to include a voucher as above to show how the freights were paid;

“Also tariff sheets or statements made therefrom, showing lowest rate prevailing during five years prior to April 4th, 1887, to Pacific Coast and intermediate points, together with statements showing charges then prevailing, if any, for returning empty tank cars.

“*Note.* (Please note that a statement containing the facts asked for extracted from the books or other papers will answer all purposes, without the production of all original papers and books.)

“In the above two cases also the complainant respectfully asks for an order from the Commission directed to the Central Pacific Railroad Company and to the Southern Pacific Railroad Company, each one of whom is a party in one of the above cases, to produce at the hearing a statement of all shipments of petroleum or its products since April 4th, 1887, from Pacific Coast terminal or intermediate Pacific Coast common points eastward over their several lines, showing points of shipment and points of destination, name of consignor, rate of freight charge, character of shipment—*i. e.*, whether tank, barrels, or combination car—and statement of all allowances, rebates, drawbacks, car mileage or otherwise paid or allowed on any of such shipments.

“In the case of the Louisville & Nashville Railroad Company *only*.

“To Milton H. Smith, Vice President, L. & N. R. R. Co., Louisville, Ky.

“To John M. Culp, Gen. Frt. Agt. L. & N. R. R. Co., Louisville, Ky.

“And bring with you all books, accounts or statements showing all shipments of petroleum and its products south and west over the lines of the Louisville & Nashville Railroad and its branches or connections since April 4th, 1887, car lots, with dates, consignor, consignee, amounts and rates of each shipment and full account of all car mileage, rebates, drawbacks, or allowances paid or allowed on or by reason of each shipment—together with statement showing dates, payee and amounts paid as car mileage or otherwise on account of returning empty cars which had carried any of above freight, and also all amounts received for the transportation of each

and every empty car which had carried any of the above traffic;

“And also all books, statements or accounts showing how many, if any, of the cars carrying the above traffic had returned with back loading of cotton seed oil or turpentine, and the number and weight of each tank car load thereof, and the freight charges on the same, together with all allowances, car mileage or rebates or other payments paid or allowed on such cars or cargo returning as aforesaid with cotton seed oil and turpentine, or either;

“And also a statement showing the total bulk or amount transported south and west, of petroleum and its products and the total bulk or amount transported north and east, of cotton seed oil and turpentine, showing also how much of the two latter classes of freight came north and east in cars that had gone south or west with petroleum and its products since April 4th, 1887;

“Also statement showing the car number and owner of each tank car passing over your line or any part thereof with cotton seed oil or turpentine, since April 4th, 1887, with the weight of cargo on which freight was charged on each car, and the net rate of freight received for each car, and the origin, destination, consignor and consignee of each;

“Also statement of all shipments of petroleum or its products over the lines of the Louisville & Nashville Railroad and its branches since April 4th, 1887, showing respective amounts in barrels and respective amounts in tank cars of all such shipments;

“Also statement showing all shipments of petroleum or its products in car-load lots, and in less than car-load lots, respectively, each specified, over the lines of the Louisville & Nashville Railroad and its branches from Louisville, Decatur, Birmingham, and all other points to Cullman, Alabama, since April 4th, 1887, with date of shipment, consignor and consignee, and amount of freight received on each, together with rebate or drawback, if any, allowed on each shipment;

“Also separate statement showing all shipments of petroleum or its products to Birmingham and Decatur since April, 1887, with date of shipment, character of car, whether tank

or otherwise, weight of cargo, rate of freight charge and drawback or rebate, and name of consignor and consignee of each shipment.

“*Note.* (Please note that a statement containing the facts asked for extracted from the books or other papers will answer all purposes, without the production of all original papers and books.)

“To J. H. Flagler, Prest., American Oil Trust, New York.

“To J. O. Moss, Treasurer, “ “ “

“To Robert F. Munroe, Auditor, “ “ “

“And bring with you the Stock Ledger and list of Stockholders of the American Cotton Oil Trust;

“And also bring with you all contracts, accounts and statements showing the number of cars of the Union Tank Line used by the Cotton Seed Oil Trust, or its consignor, since April 4th, 1887, with the amounts paid for the use of the same, the mileage made by the said cars, and the amounts of mileage charges or otherwise received for the use of the said cars on the railroad for all or any railroad or other transportation company, and all bills, vouchers, receipts or other statements showing amounts of cotton seed oil shipped by or to the said Cotton Seed Oil Trust, and by or to any firms, associations or corporations affiliated thereto, since April 4th, 1887, showing by what line shipped, at what rates of freight, and all rebates or allowances, mileage or otherwise received on account thereof.

“*Note.* (Please note that a statement containing the facts asked for extracted from the books or other papers will answer all purposes, without the production of all original papers and books.)

“To George H. Webster, of Armour & Co., Chicago, Ill.

“And bring with you all books, accounts, vouchers, or other statements showing the amounts of cotton seed oil received by railroad by Armour & Co., since April 4th, 1887, the dates when received, the name of the railroad companies receiving and delivering the same, the origin and destination of each consignment, the number and weight of contents of each tank car load thereof, and the freight charges on each

shipment—together with all rebates, drawbacks or other allowances received by Armour & Co., for or on account of each consignment aforesaid;

“Also the dates, with rates and amounts paid for rental or use of tank cars to Union Tank Line or others;

“Also bring with you original sample vouchers or freight receipts, one for each ten days, from April 4th, 1887, showing how and in what manner freight rates were paid.

“*Note.* (Please note that a statement containing the facts asked for extracted from the books or other papers will answer all purposes, without the production of all original papers and books.)

“To Joseph Sears, Vice-Prest. The Fairbanks Company, Chicago, Ill.

“And bring with you all books, accounts, vouchers or other statements showing the amounts of cotton-seed oil received by railroad by the Fairbanks Company, since April 4, 1887, the dates when received, the name of the railroad companies receiving and delivering the same, the origin and destination of each consignment, the number and weight of contents of each tank car load thereof, and the freight charges on each shipment— together with all rebates, drawbacks or other allowances received by the Fairbanks Company for or on account of each consignment aforesaid;

“Also the dates, with rates and amounts paid for rental or use of tank cars to Union Tank Line or others;

“Also bring with you original sample vouchers or freight receipts, one for each ten days, from April 4, 1887, showing how and in what manner freight rates were paid.

“*Note.* (Please note that a statement containing the facts asked for extracted from the books or other papers, will answer all purposes, without the production of all original papers and books).

“To Lyman Klapp, Prest. Union Oil Company, Providence, R. I.

“And bring with you all books, accounts, vouchers or other statements showing the amounts of cotton-seed oil received by railroad by the Union Oil Company as well at the Providence Mills as at the New Orleans Mill, *via* the

Louisville & Nashville Railroad, or any of its branches since April 4th, 1887, together with the name of the railroad receiving and delivering the same, the origin and destination of each consignment, the number and weight of each tank car load thereof, and the freight charges on each shipment—together with all rebates, drawbacks or other allowances received by the Union Oil Company for or on account of each consignment aforesaid.

“*Note.* (Please note that a statement containing the facts asked for extracted from the books or other papers will answer all purposes, without the production of all original papers and books).

“Very respectfully,

“FRANKLIN B. GOWEN,

“*Attorney for Compl.*

“No. 119 South 4th Street, Philadelphia, June 18, 1889.”

In a separate paper the object of the testimony asked for in these subpoenas *duces tecum* is set out by complainant as follows:

“I. The first four witnesses named are officers and agents of the Standard Oil Trust. The object of the testimony asked for is to show:

“First: What concerns are affiliated to the Standard Oil Trust.

“Second: The shipments and rates paid by the various corporations affiliated to the Standard Oil Trust over the lines of the defendants.

“Third: The rates paid previous to April, 1887, for comparison with present rates, upon the question of reasonableness, etc.

“Fourth: The car mileage and other rebates received by the Standard Oil Trust—the allegation of the complaint being that the Standard Oil Trust is favored by defendants.

“Fifth: The amount of water shipment to Pacific Coast—as evidence upon the question of whether the water competition justifies reduced rates to certain points.

“Sixth: The contract for the purchase or control of a certain patent car. We allege that the railroads favor ship-

ments by a particular species of car, of which the Standard Oil Trust has control of the patent right.

“II. The next two witnesses, Mr. Robinson and Mr. Terrill, are officers of the Union Tank Line, and the object of the testimony asked for is to show the exact relations between the Union Tank Line and the several railroads in the shipment of both petroleum and cotton-seed oil.

“III. The next witness, Mr. Frazier, of the initial line over which shipments go to the Pacific Coast, is asked for such data only as is necessary under the allegations of the complaint to show the charges against and methods of treatment of the various shippers over the line.

“IV. The next six witnesses, viz.: Messrs. Kimball, Van Kuran and Munroe, and Messrs. White, Hynes and Clements, are the officers of the two principal companies defendant; and they are asked to produce from their books only such testimony as would be evidence under the allegations of the complaint, with possibly this exception: that while the complaints only refer to the rates to Pacific Coast terminal or common points, the subpoenas ask for information about points east of any of the above. We ask for this because it is our intention to amend the complaints in these two cases by averring that the defendants are charging more for a short haul than for a long one, and our allegation will be that this is done to enable the Standard Oil shippers to re-ship eastward from common or terminal Pacific points at rates the aggregate of which, going and coming, is less than the open going rate to the particular point.

“You will note on page 7 that in addition to the subpoenas *duces tecum* we ask for orders on the Central Pacific Railroad Company and the Southern Pacific Company, both of whom are parties, to produce certain statements. This is asked for to avoid subpoenaing or examining witnesses who live 3,000 miles away, and the jurisdiction of the Commission over parties is ample to compel the production of such statement.

“ V. The remaining witnesses are all in the case of the Louisville & Nashville Railroad Company, and the testimony asked for is all directed to the question of discrimination in petroleum, cotton-seed oil, and turpentine freights, and to the subject of what particular rates are charged to different parties competing with complainant, either directly or by means of rebates or allowances on petroleum, or reduced rates on cotton-seed oil and turpentine.”

The petitioner is a refiner of petroleum at Marietta, Ohio, and in his first two complaints above stated, which are exclusively against railroad companies named therein, he makes in substance the following charges :

“ Third—That there is an organization known as the Standard Oil Trust, to which are affiliated a great number of corporations, associations, firms, and individuals who are also refiners of petroleum in various parts of the country, and shippers of refined oil and other products of petroleum as interstate traffice over the lines of the several railroads above named, from various billing points in the East to the points upon the Pacific Coast reached by the lines of the said respondents.

“ Fourth—That by tariff sheet No. 18 of the Transcontinental Association, dated January 1, 1889, under which shipments are made and transported upon the lines of the respondents, the rates on coal or carbon oil, crude or lubricating petroleum, benzine, gasoline, and naphtha, at owner's risk of fire and leakage, from common points east of the ninety-seventh meridian of longitude to San Francisco, Sacramento, Marysville, Stockton, San Jose, Oakland, Los Angeles, and San Diego, all in California, and to Portland and Astoria, in Oregon, are one dollar and twenty-five cents per one hundred pounds. That by a prior tariff sheet, No. 15, dated September 1, 1888, the said rates were eighty-two and one-half cents per one hundred pounds. And the petitioner is informed and believes, and avers upon such information and belief, that for a long time the said respondents have transported refined oil and other products of petroleum for those affiliated to the Standard Oil Trust, over the same route

as hereinabove described in the same direction, and in like circumstances and condition, at seventy-two cents per one hundred pounds.

“Fifth—That your petitioner is desirous of shipping petroleum in wooden barrels, the weight of which wooden barrels, empty, is seventy-five pounds, and the weight of contents of oil three hundred and twenty-five pounds, and that the shippers affiliated to the Standard Oil Trust aforesaid ship in two other methods, as follows:

“(a) By bulk in tank cars composed of a longitudinal tank mounted upon two trucks, and—

“(b) By two upright iron tanks placed at the ends over the trucks inside of a box car, leaving space between said upright tanks for other freight to be carried in the same box car.

“Sixth—That your petitioner is obliged to pay for the weight of his wooden barrel package, but that the respondents make no charge whatever to those affiliated to the Standard Oil Trust for the weight of the longitudinal tank, or for the weight of the two upright tanks transported in the box car as aforesaid, although your petitioner avers that the expense and risk of the transportation of oil in bulk by longitudinal or upright tanks as aforesaid is greater than that attending the transportation by wooden barrel packages; that the dead weight of tank carried in said longitudinal tank cars and said upright tanks in box cars, taking into account the fact that both are transported both ways, as against barrel packages one way, is much greater in proportion to contents than the dead weight of the barrel packages; and that the cost of transporting the iron tanks, exclusive of the weight of the contents, is as great or greater than the cost of transporting the weight of the wooden barrel, exclusive of the oil therein contained; and your petitioner states that he is informed and believes, and therefore avers from such information and belief, that the respondents return the empty tank cars and tanks for the shippers affiliated to the Standard Oil Trust without charge, and that in many instances the said respondents pay a car-service mileage upon said empty tanks and tank cars.

“Seventh—That the discrimination per barrel measure of

actual oil on the Pacific Coast against the petitioner as a shipper by wooden barrels, as compared with those affiliated to the Standard Oil Trust, shipping by longitudinal or upright tanks, and irrespective of any discrimination or allowance for returning empty tanks or tank cars, is at the several rates hereinabove named, as follows:

At 72 cents per 100 pounds, 54 cents per barrel.

" 82½ " " " 61½ " "

" \$1.25 " " " 93½ " "

and that such discrimination excludes your petitioner from the markets of the Pacific Coast, and enables those shippers affiliated to the Standard Oil Trust to secure and maintain a monopoly of the petroleum trade at all points reached by the lines of the respondents, to which the rates hereinabove mentioned are applicable.

" Eighth—That the respondents do not and will not furnish to your petitioner, or to shippers generally, either longitudinal tank cars or upright tanks in box cars for the shipment of petroleum and its products; that your petitioner is unable to obtain such tanks for shipment over the respondents' lines; that petroleum is an article of common and universal use, and one of the great natural products of the country, which is produced to the extent of over twenty million barrels annually; and that it is as much the duty of respondents to furnish cars of all kinds, tanks or otherwise, for the transportation of petroleum, as it is to furnish cars for the transportation of any other natural or manufactured product; and that especially is it the duty of the respondents to furnish cars of all kinds, tank or otherwise, to the public for the transportation of petroleum if they maintain rates of unequal effect, whereby one shipper by one particular system of transportation is enabled to secure an advantage of ninety-three and three-fourths cents per barrel measure of oil over his competitor .

" Ninth—And your petitioner avers:

" (a) That the said rate of one dollar and twenty-five cents per one hundred pounds hereinabove complained of, is unreasonable and unjust.

“(b) That the system of charges herein complained of constitutes a discrimination against your petitioner and in favor of shippers affiliated to the Standard Oil Trust, in that it obliges the former to pay more than the latter for a like and contemporaneous service in the transportation of a like kind of traffic under substantially similar circumstances and conditions.

“(c) The said system of charges, and failure to furnish tank cars and tanks in box cars to your petitioner, gives an undue and unreasonable preference or advantage to shippers affiliated to the Standard Oil Trust over your petitioner, and subjects your petitioner to an undue and unreasonable prejudice or disadvantage as compared with the other shippers aforesaid.

“(d) The said system of charges, and the failure to furnish tank cars and tanks in box cars to your petitioner, and the public generally, gives to the shipments by tanks, whether in tank cars or in tanks in box cars, an undue and unreasonable preference or advantage over shipments by wooden barrel packages, and subjects the latter kind of traffic, as compared with the former, to an undue and unreasonable prejudice and disadvantage.”

The averments of the second complaint are in substance much the same as the first.

In the third proceeding, which is against the Louisville & Nashville Railroad Company, after enumerating the relative rates charged by its tariffs on coal oil from and to various points going south, and on cotton-seed oil and turpentine from and to points going north, and the advantages of the Standard Oil Trust and the corporations, firms, and associations affiliated with it in owning and in being furnished tank cars, while petitioner is subjected to the disadvantage of not being furnished with tank cars and of being charged relatively higher rates on his oil shipments in barrels than in tank cars, the complaint summarizes the grievances of petitioner as follows:

“(a) The rates on coal oil above given are unjust and unreasonable.

“(b) The said rates on cotton-seed oil and turpentine,

respectively, and on coal oil, mentioned in the seventh paragraph of this complaint, make and give an undue and unreasonable preference or advantage to the traffic of cotton-seed oil and turpentine, respectively, over the traffic in coal oil.

“(c) The said rates on coal oil subject the traffic in coal oil to an undue and unreasonable prejudice or disadvantage as compared with the traffic in cotton-seed oil and turpentine respectively.

“(d) The said rates as aforesaid make and give an undue and unreasonable preference and advantage to the traffic of coal oil in tank cars over the same traffic in barrel packages, and subjects the latter to an unreasonable prejudice or disadvantage, as compared with the former.

“(e) The said rates make and give an unreasonable preference and advantage to the Standard Oil Company of Ohio, the Standard Oil Company of Kentucky, the Camden Consolidated Oil Company of West Virginia, and other shippers affiliated to the Standard Oil Trust, over your complainant, and subjects the latter to an unreasonable prejudice and disadvantage, as compared with the former.

“(f) The said rates and charges mentioned in the tenth section of this complaint are in contravention of the fourth section of the Act to regulate commerce aforesaid.

“(g) That the refusal of the respondent to furnish tank cars is in contravention of the provisions of the second paragraph of the third section of the Act to regulate commerce aforesaid.”

The questions arising upon this application are such as relate to the proper practice to be observed in the issuance of subpoenas *duces tecum* by the Commission, or by a Commissioner, under the statute, and the rules that should govern parties in the production of books and documentary evidence. The power conferred upon the Commission, bearing upon this subject, is found in the twelfth section of the Act to regulate commerce, and is in the following language:

. . . “and for the purposes of this Act the Commission shall have power to require, by subpoena, the attendance and testimony of witnesses and the production of all books,

papers, tariffs, contracts, agreements and documents relating to any matter under investigation, and in case of disobedience to a subpoena, the Commission, or any party to a proceeding before the Commission, may invoke the aid of any court of the United States in requiring the attendance and testimony of witnesses and the production of books, papers, and documents under the provisions of this section.

“And any of the circuit courts of the United States within the jurisdiction of which such inquiry is carried on may, in case of contumacy or refusal to obey a subpoena issued to any common carrier subject to the provisions of this Act, or other person, issue an order requiring such common carrier or other person to appear before said Commission (and produce books and papers if so ordered) and give evidence touching the matter in question, and any failure to obey such order of the court may be punished by such court as a contempt thereof. The claim that any such testimony or evidence may tend to criminate the person giving such evidence shall not excuse such witness from testifying; but such evidence or testimony shall not be used against such person on the trial of any criminal proceeding.” And in the seventeenth section of the statute as amended March 2, 1889, it is provided that “Either of the members of the Commission may administer oaths and affirmations and sign subpoenas.”

It is also further provided in the seventeenth section:

“That the Commission may conduct its proceedings in such manner as will best conduce to the proper dispatch of business and to the ends of justice. . . . Said Commission may, from time to time, make or amend such general rules or orders as may be requisite for the order and regulation of proceedings before it, including forms of notices and the service thereof, which shall conform, as nearly as may be, to those in use in the courts of the United States.”

In laying down rules upon this subject which will best conduce to the proper dispatch of business and the ends of justice, we have considered the practice in the courts of the United States, as well as the rules indicated by Federal statutes, in proceedings which seem to be most nearly analogous to the present, and such others as arise before us. In the

courts of the United States the practice appears to be, for the application for a subpoena *duces tecum*, to be made to the court, or the judge thereof, by petition, supported by affidavit, unless the petition be the official statement of a district attorney, or other prosecuting public officer, of the facts therein alleged, and the facts set out in the petition must describe the books or papers called for with that degree of certainty which is practicable, considering all the circumstances of the case, so that the witness may be able to know what is wanted of him, and to have the books and papers at the trial, in order that they may be used if necessary before the tribunal in which the proceeding is pending. *United States v. Babcock*, 3 Dillon C. C. Reports, 566.

In section 869 of the Revised Statutes of the United States, a *prima facie* case must be made to the effect that the "paper, writing, written instrument, book or other document, is in the possession or power of the witnesses, and that the same if produced will be competent and material evidence for the party applying therefor," before the subpoena *duces tecum* is issued.

In proceedings between parties, pending before us, where it is sought to compel parties who are not carriers subject to the Act to regulate commerce, or who are strangers to the proceedings, to produce books, papers, or documents, a proper rule is for an application to be made in writing to the Commission specifying, as nearly as may be, the books, papers, or documents, for the production of which the subpoena *duces tecum* is desired, accompanied by an affidavit that the books, papers, or documents described, are in the possession of the witness, or under his control, and setting forth facts which make a *prima facie* case that these contain evidence that is material and necessary to the party seeking their production, in the pending proceeding. Such a rule will not only conduce to the proper dispatch of business, and to the ends of justice, but it will guard the issue of such process against a latitude that may be useless or oppressive. Witnesses as well as parties, and frequently strangers, have rights in all such matters, and any rule upon the subject must be such as will have a due regard for the rights of all

interested, while at the same time it reaches with proper dispatch the ends of justice, and the rule thus indicated is one of substance and not mere form.

According to the views we hold upon this subject, the test of such an application for the compulsory production of books, papers and documents, is: Does it make a *prima facie* case that they are in the possession or under the control of the witnesses, what they are by name, description, or such reference to them or to their contents as will indicate what said books or papers are, no matter by what name they may be called by those making or holding them, and setting forth facts which show that the same, if produced, will be competent and material evidence for the party applying therefor? This being the test, we proceed to consider whether the application in this instance makes a *prima facie* case for the compulsory production of the books, papers and documents to which it relates, as against those who are not parties to these proceedings, and in doing so it is apparent to us that the very able and eminent counsel who prepared this application, did so perhaps in accordance with systems of practice which we know to prevail in many of the States, under which subpoenas *duces tecum* are issued almost as a matter of course on application for them.

There is no affidavit in support of the application, and under the rule we have stated there should be an affidavit. The application does not state that the books, papers and documents are in the possession or within the power of the witnesses to produce, and, under the rule we have stated, the application should state these things, or their equivalents. Under the rule we have stated the application should state facts which would make a *prima facie* case that the books, papers and documents named would be competent and material evidence for the petitioner, upon the hearing of these proceedings, if produced, and the application does not state this. There are other features of this application that require notice, and the entire subject involved in it is one that is too important to be disposed of without indicating the rules that we think should prevail in this branch of the jurisdiction we are required to exercise under the statute. These

rules should, as far as practicable, be defined and stated for the guidance as well as the protection of parties, and a knowledge of them should not reside alone in the breast of the officer who is called upon to issue such extraordinary process.

The books, accounts, written papers and documents called for by the application appear to divide themselves for convenience of reference into two classes: those that belong to corporations, firms or associations not parties to these proceedings, and those that belong to corporations that are parties to these proceedings. Those that are not parties to these proceedings are, The Standard Oil Trust, and the corporations, firms and associations affiliated to the Standard Oil Trust, or in which the Standard Oil Trust has an interest; The Union Tank Line; The American Cotton Oil Trust; The Union Oil Company; Armour & Co., and The Fairbanks Company. Those who are parties are the railroad companies, defendants, named in the complaints.

Whether The Standard Oil Trust, and its affiliated corporations, firms and associations, constitute a corporation or an association, or a partnership, the application does not state, nor do the complaints, but we think upon the averments of the application that they come within the category of being an association, or partnership. The Union Tank Line is evidently a corporation, association or partnership, and this is true also we think of the Union Oil Company, The American Cotton Oil Trust, and The Fairbanks Company; while according to the statements of the application it would seem that Armour & Company is a firm, or partnership. Unless the books, papers and documents of these corporations, associations and partnerships, not parties to these proceedings, are material and competent evidence, against these defendants, their compulsory production can not be required.

The settled rule appears to be that entries in the books of a corporation relating to matters of fact, other than corporate proceedings, such as its mere business transactions, while these may be admissible against the corporation itself, in certain stages of evidence, are not admissible in evidence in any way to affect strangers. 2 Waterman, Law of Corpora-

tions, pp. 646-647, 1 Wharton Evidence (3d Ed.), Sec. 662. The same rule applies to partnership books. 2 Wharton, Evidence (3d Ed.), Sec. 1132, and also to account books kept by strangers. 1 Wharton, Evidence (3d Ed.), Sec. 175. It would seem from the principles recognized in the law of evidence as laid down by these and other authorities, that the books, accounts and documents, the compulsory production of which is called for by this application to be made by the corporations, firms or associations not parties to these proceedings, would not be competent or legal evidence for the petitioner in these proceedings, even if produced, and that therefore a *prima facie* case is not made by the application for their production. The same result follows as to written instruments, which these corporations, associations and firms are called upon by the application to produce. 2 Wharton, Evidence (3d Ed.), Sec. 1044.

While, so far as now appears, upon the averments of the petitions in these proceedings, and of this application, the books of the corporations, firms and associations, not parties to these proceedings, are not legal evidence against these defendants, yet it is not intended to be intimated that there may not be facts, contained in some of their entries, which are material evidence upon some of the issues in these cases. If there are such facts, these may be testified to by witnesses orally, if they can do so, or with the aid of the books containing them, if necessary for accuracy, or to assist their memories. But these proceedings have not yet reached a stage where it appears that these books will be necessary or important for any such purpose, even if it be assumed that they contain entries in which are incorporated any such material facts, and as to whether they will ever reach any such stage is one of the contingencies which we can not foresee upon the threshold of these proceedings and before any evidence has been introduced.

An obvious comment upon the first branch of this application is that the books, papers and documents, which are called for to be produced by the corporations, firms and associations not parties to these proceedings, are *prima facie*, at least as to the parties to these proceedings, *res inter alios*,

and for that reason, if for no other, not legal evidence. It may be contended, however, that it is expected on the hearing to so connect the defendants with the facts, which it is supposed will be proved by the writings demanded, as to make a showing of such facts not only proper but important. We understand this is to be the ground on which it is supposed the application should be granted, and that if these corporations, firms and associations not parties to these proceedings have profited by the unjust discriminations charged, the defendants should be allowed no legal exemption from having proof of the facts made by the books and papers of those who have thus profited. To this it must be said that whether there has been such unjust discrimination, from which these corporations, firms and associations not parties to these proceedings have profited, is the very fact in controversy, which one party to these proceedings affirms and the other denies, and the proof in regard to which is yet to be presented. In this stage of these cases, action and orders preliminary to their trial must avoid pre-judging the issue and must not assume that one party, rather than the other, will on the hearing support his allegations by convincing proofs. We can not overlook the plain principle of justice, when an order for the production of books and papers is called for, that the order, if made, must not ignore the fact that as yet the parties charged are not convicted, and may prove to be erroneously charged.

A charge like that here made is one that may occasionally be made in other proceedings before us against business men, who are not parties to such proceedings, and the order applied for, if granted upon the present showing, would be a precedent for a similar order upon a similar showing for process, directed, for example, to a factor at New Orleans or a merchant at San Francisco, or Seattle, or Portland, neither of whom were parties to the proceeding, to compel him to appear hundreds or even thousands of miles from his place of business with his books, bills, accounts and vouchers, running through many years, the mere investigation and sifting of which, for the purpose of such production, might be the work of many weeks, or even of several months, and the pro-

duction a matter of serious embarrassment to the regular, orderly and profitable transaction of his business. The exercise of such an extraordinary power can not be justified upon an application which fails to show a *prima facie* right to make use of, as material and competent evidence, what is called for, after the witness, at whatever inconvenience and cost to himself, has been compelled to produce it. The *prima facie* showing that what is required to be produced will be legal evidence for the party demanding it ought to be very clear and full. We can not forget that witnesses and strangers in such matters have rights, as well as litigants, and until some such showing is made, the extraordinary process now called for, as against those who are not parties to the proceeding, or who are not carriers subject to the Act to regulate commerce, would not only be oppressive, burdensome and expensive, but would also be impertinent and intrusive.

As to the second branch of the application, some of the considerations above stated are without relevancy. In so far as the books, papers and documents called for are those of parties defendant, who are subject to the Act to regulate commerce, they are supposed to show facts having more or less of a bearing according to the manner in which they are made up and kept, upon the issues to be tried, and to have a relevancy which the defendants can not dispute. An examination of the statute from which the Commission derives its powers satisfies us that the power is plenary, and that it is our duty to call for the production of such books and papers, whenever the nature of the inquiry to be gone into is such as to render their production necessary or proper.

The actual questions for our investigation and consideration in these complaints are, in substance, whether the statute has been violated by the defendants in charging petitioner and other refiners, who ship their products in barrels, higher rates than have been or are charged to others, who ship the same kind of products over their lines in tank cars; or in furnishing tank cars to some and refusing them to others; or in making such allowances for the rent of tank cars as to

greatly reduce the actual rates charged for shipping oil in them, thereby unjustly discriminating in their favor as against barrel shipments; or, in violating the long and short haul clause of the statute; or in an unjust discrimination against coal oil in barrels by a comparison of the rates on this commodity with those on cotton seed oil and turpentine.

Now in reference to each of these questions, while it may be true that the rate-sheets of the carriers, their tariffs, their schedules, or any other rates, tariffs, or schedules under which the service was rendered, or facilities and accommodations furnished, or the testimony of witnesses who know the facts, as to what rates were actually charged and paid, or accommodations and facilities furnished, if there are any such witnesses, are evidence, it is none the less true that the "books" of the carriers may have such relation to these transactions and may be so kept as to come also within the scope of being evidence as against the carrier making them, and indeed for other purposes. If the violations of the statute, as charged in these proceedings, have occurred, and are occurring in current transactions, involving shipments of vast quantities of freight, over many thousand miles of railways, and by many different carriers, and under different ownerships and managements, it would appear reasonably probable that they would show some of their traces in the rate-sheets, tariffs, schedules and books of these carriers, and if so, these rate-sheets, tariffs, schedules and books would be evidence to show this, in so far as they may show it, if at all; or the testimony of witnesses, who know the facts as to what rates were charged, or facilities furnished, would be evidence, whether such rates actually charged, and facilities furnished, were in accordance with, or different from, published rates, tariffs and schedules.

The twelfth section of the Act to regulate commerce contemplates that "the books" of the carrier shall be admissible in evidence for whatever light they will throw upon the transactions in question, as much so as the tariffs, schedules, rate-sheets, contracts, or agreements the carrier may have made bearing in any way upon any of such transactions. These

books, whether made up from shipping tickets, way-bills, expense bills, or otherwise, are supposed to give the exact particulars of the consignment, showing the weight, rate and amount of charges to be paid to the company's agent, and are put in this enduring form at the time of the consignment, as part of the transaction, upon rates that the law requires to be open and public, and thus they give a history of the details of the transaction. The relation that these books bear to every such transaction, and the attitude that those occupy in making and keeping them, under such circumstances, not only to the shipper and consignee, but to the public, would seem to fairly indicate that the rule as to a *prima facie* showing for their production when necessary to be used as evidence in a pending proceeding, to which the carrier is a party, should for obvious reasons not be as stringent as in the case of parties who occupy no such attitude or relation to the transactions, or who are strangers to the proceedings. It appears to us to be sufficient in such a case for the application to indicate in a general way what books of the carrier it is desired should be produced, and that there is reason to believe, and that the applicant does believe, that in the course of the hearing they will become of service on account of the light they will throw upon the questions in controversy in the proceeding, and as an evidence of good faith in making the application, the applicant should make an affidavit as part of the application, that such application is made in good faith, and not for the purpose of vexing or harrassing the defendant, and that, generally speaking, upon such a showing as this the process should issue for the production of the books, unless the number of books called for should be so large, or from other exceptional circumstances the Commission should order the testimony to be taken at such place as would avoid oppression in producing the books at a far distant hearing, and expedite the progress of the investigation. We have seen cases in our experience where carriers, at the instance of complaining petitioners, were required to produce their books, at a distance of hundreds of miles, for the purposes of evidence at a hearing, and when thus produced were not even opened by those at whose

earnest call they were brought, and it would seem that there ought to be some safe-guard in the shape of a rule.

There are several modes of procedure by which the inconvenience to the defendants of producing books, and the delay and labor of going over their entries, might be avoided by petitioner. If one or more witnesses should be subpoenaed from the different companies proceeded against, and a notice should be served with the subpoena requiring the witnesses to furnish the published rates and tariffs of such company for a specified period, and also requiring them to furnish statements of the actual charges made, and car facilities furnished, during such period to the Standard Oil Trust and the others named in this application, if different from the published tariffs and schedules, it would probably be sufficient for all the purposes of these and other proceedings; or, if the parties would take depositions, by consent, in advance of the hearing, it would probably answer the same purpose. If a railroad company, or its officers, should refuse to furnish the proper evidence from its books in some such reasonable manner as is here indicated, it might then become necessary to resort to harsher proceedings, either by an examination of its books by a representative of the Commission, or by requiring the production of the books by compulsory process, and if need be, through the exercise of the authority of the courts, as provided in the statute. But it may not be improper for us in this connection to say that often as railroad companies have been called upon to exhibit their books in evidence for the inspection of parties in proceedings before us, not one of them has yet failed or refused to do so, nor do we have any cause to believe that petitioner would have any difficulty in obtaining from any of the defendants all material and proper evidence to be found in any of their books, in either of the modes above indicated.

The documentary evidence called for from the books of the defendants, omitting such portions of it as we indicate to be immaterial and unimportant, according to what its import may be, may have a very legitimate bearing upon many, if not all, of the questions involved in these proceedings. They may be the best and only evidence that can be obtained upon

some of these issues, and whatever information, if any, they contain upon any of these subjects the defendant carriers ought not to hesitate to furnish, and if they refuse to do this, upon a proper application, they will, of course, be compelled to do so by due process of law.

Every purpose, however, that can be reached in these proceedings can be attained by proving the rates actually charged, if there were any such to certain shippers or consignees, that were different from the published tariff rates, or the preferential facilities, if there were any such, that were furnished by the defendants to some shippers or consignees, and not to others, or the comparative rates on the different commodities named in the complaints, and to designated points. . We do not see the necessity or importance of showing, in all the minuteness of detail specified in the application, the innumerable shipments over the various lines that were made for a period of many years before the Act to regulate commerce took effect, as well as since that date. We do not see how a vast number of different shipments, and of different rates charged, during a long period of years prior to the Act to regulate commerce, are material or important to be considered in these proceedings; nor do we see how it can be material or important who the consignors and consignees were or have been, at so many different points, through long periods of time, from and to whom oil may have been transported over the defendants' lines. It seems to us sufficient for all the purposes of these cases to show the rates published, the rates actually charged, and the facilities furnished, from and to designated points since the Act to regulate commerce went into effect, and for whatever light these may throw upon the question of the reasonableness and justness of rates, and the fairness of the facilities afforded, by way of comparison, what these were for a reasonable time—for example, a period of twelve months before the Act to regulate commerce went into effect.

In proceedings before us, so well recognized is the importance of having what the books of a defendant railway company may show, having a bearing upon the questions involved, and that witnesses who are officers and agents will be inter-

rogated in reference to them, and their production ordered by the Commission if deemed necessary for any of the purposes of the investigation, that these witnesses usually come prepared with statements taken from them as to what they actually show. Where this is done, examination and cross-examination verifies them, and shows what supplements, if any, they need, and these sworn supplements are furnished; and if all this is not found sufficient then the books may be produced. Where such statements are not brought in the first instance, the actual developments of the investigation point out what is needed, and under oath they are prepared and furnished by witnesses. Practically, thus far, this has to the satisfaction of parties answered all the purposes of a production of the books, and with far less burden and inconvenience to the carriers. If it were otherwise, and if the examination of such books to any large extent should be found to be necessary to the ends of Justice, the Commission might be disposed to order the hearing to be had, or, at least, the testimony to be taken, at such place as would reduce the trouble and inconvenience; for it must be apparent that the mere labor of searching out the entries in these books and getting them together from the vast accumulations of a railroad office, running through long periods of time, would be enormous, and that their production at a far distant point, for the purposes of a hearing, in indefinite number and quantity, such as is called for by this application, might be unjustly oppressive, as well as very seriously inconvenient.

In proceedings like these, which are judicial in their nature, and fairly governed by the rules and principles of law we have stated, it could not be said to be a sufficient excuse for making a preliminary order at this stage of the proceedings for a general production of books, papers and documents, such as is here asked for, that petitioner is apprehensive that witnesses might be unfriendly, and refuse to answer proper questions or to give proper information. It is not to be assumed in advance that any railroad officer or agent, any more than any other witness, will refuse to respond to any question put to him, unless upon the advice of the counsel of the company that the question is improper. The

probability would seem to be that the testimony of witnesses (taken at the railroad offices) would be as fully brought out by deposition as at the open sessions of the Commission, for counsel would know very well that nothing was to be gained by giving improper advice in any spirit of litigious antagonism, and that the very refusal to testify freely might constitute a valid ground for compulsory proceedings, such as in the present state of the case would be unwarranted.

But while the defendants are entitled to have, as they must receive, the protection that the law affords against oppressive and unwarranted orders, for what has not yet been shown to be the necessary production of their books and papers in these proceedings, it is only proper to state that the petitioner who is here challenging an investigation of their rates and methods, in the course of legal procedure, has rights under the law for the production of evidence, material and necessary, in relation to his complaints, if it exists in their books and records, which are entitled to equal protection and assertion. In obtaining such evidence, if it exists, he is not to be burdened with methods of procedure oppressively expensive to him, and which unnecessarily delay the investigation, for if his complaint should turn out to be warranted to any considerable extent, then all such unnecessary delays can not be otherwise than ruinously injurious to him and to others who refine and ship coal oil, as he does, in barrels; nor can the fact be overlooked that if his complaints are not well founded it is peculiarly within the power of defendants who are carriers to show it without any great or expensive delays about it. To any extent that they can fairly and justly save time, labor or expense to complainant, or to their companies, by giving to him, in response to any calls he may make, statements of facts shown by their books, records, or files, which may probably have importance on the hearing, the officers and agents of the respondents under the direction of respondents ought to give such statements, and ought to do so as promptly as may be found reasonably practicable. In other words, they ought to demonstrate a willingness to facilitate the investigation instead of assuming an attitude that may tend at every step to embarrass the proceedings.

It seems also to us that in these cases, as in others that have been pending before us, that the influence, efforts and co-operation of counsel of the opposing parties might go very far to obviate expense and delay in all such matters as the mere production of statements of facts from entries in books and records, about the materiality and competency of which there can be no serious question. Much unnecessary controversy, inconvenience and delay might well be avoided in the first instance, as well as in subsequent stages of proceedings, if carriers would exhibit without technical objection, what their books show in reference to a transaction in question, to any one who calls for the information in good faith, believing, perhaps erroneously, that it is, or may be important to his interests, and when the application is seasonably and properly made, with a due regard for the convenience of the carrier's agents and officers. The instances are numerous in which it would probably put the controversy at an end, or, if not, that the party would not then trouble the carrier for the production of the books. Such books, made up and kept as we have stated, in so far as they chronicle current rates, facilities furnished, or the general movements of freight, are in the nature of semi-public records.

If parties and their counsel should follow the rules we have indicated, and adopt the suggestions we have made, we have no doubt that the ends of justice will be reached thereby with all proper dispatch, and that much inconvenience, expense and delay will be avoided; but if this is not done, and a *prima facie* case is made by the complainant for the production of books, papers, tariffs, contracts, agreements, and documents relating to the matters under investigation in these proceedings, they will have to be produced; or, if during the course of these investigations, the evidence adduced shall show that any books, papers, tariffs, contracts, agreements, and documents relating to the matters in controversy in these proceedings are material and competent evidence, and needed for the purposes of the investigation, that itself will be a sufficient showing for their production, and they will have to be produced, unless counsel for the opposing parties shall agree that sworn statements of the facts they

contain bearing upon the questions involved may be prepared and used as evidence in lieu of them.

It results from the views we have expressed that the relief sought in this application for the issuance of subpoenas *duces tecum* for the witnesses named to produce the books, accounts, or in lieu thereof, the statements called for, can not now be granted, and for the present must be denied; but this does not preclude the petitioner from renewing his application, as he may be advised, for the production of books and papers, under the rules herein indicated.

**THE LINCOLN BOARD OF TRADE v. THE UNION
PACIFIC RAILWAY COMPANY AND THE SOUTH-
ERN PACIFIC COMPANY.**

The relief claimed having been conceded, no opinion of the Commission
is filed.

The case above entitled was heard at Lincoln, Nebraska,
where voluminous testimony was taken. The following cases
were heard with it:

**I. FRIEND & SON v. THE SOUTHERN PACIFIC COMPANY, THE
DENVER & RIO GRANDE RAILWAY COMPANY, AND THE BURLING-
TON & MISSOURI RIVER RAILROAD COMPANY.**

**RAYMOND BROTHERS & COMPANY v. THE CHICAGO, BURLING-
TON & QUINCY RAILROAD COMPANY, THE DENVER & RIO GRANDE
RAILWAY COMPANY, THE DENVER & RIO GRANDE WESTERN
RAILWAY COMPANY, AND THE SOUTHERN PACIFIC COMPANY.**

**PLUMMER, PERRY & COMPANY v. THE UNION PACIFIC RAIL-
WAY COMPANY AND THE SOUTHERN PACIFIC RAILWAY COMPANY,
Two cases.**

**THE LINCOLN BOARD OF TRADE v. THE BURLINGTON & MIS-
SOURI RIVER RAILROAD COMPANY IN NEBRASKA, THE CHICAGO,
BURLINGTON & QUINCY RAILROAD COMPANY, THE DENVER &
RIO GRANDE RAILWAY COMPANY, THE DENVER & RIO GRANDE
WESTERN RAILWAY COMPANY, AND THE SOUTHERN PACIFIC RAIL-
WAY COMPANY.**

G. M. Lambertson and O. P. Mason, for defendants.

*Charles H. Tweed and W. H. L. Barnes, for The Southern
Pacific Company.*

*Edw. O. Wolcott and J. F. Vail, for the Denver & Rio Grande
Ry. Co., and the Denver & Rio Grande Western Ry. Co.*

*C. J. Green, T. M. Marquette and Wirt Dexter, for the
Chicago, Burlington & Quincy R. R. Co., and Burlington &
Missouri River R. R. Co., in Nebraska.*

*J. M. Thurston, Shellabarger & Wilson and A. J. Poppleton,
for the Union Pacific Ry. Co.*

MEMORANDUM.

BY THE COMMISSION:

In all these cases complaint was made of the rates charged by defendants for the transportation of freights from Pacific Coast points to Lincoln. The rates were higher than were charged for the transportation of like freights from the same points to Omaha; and the defendant roads were charged with unjust discrimination as against the people and traders of Lincoln in making them so.

In some of the cases a violation of the "long and short haul clause" of the fourth section of the Act to regulate commerce was charged; one of the lines on which Pacific Coast shipments were made to Omaha being through Lincoln, and Omaha being nevertheless given the lower rate.

In the cases to which the Union Pacific Company is a party a further question was raised, whether the people of Lincoln, on the ground of representations which were made to them when the road from Valley to their city was constructed—that they should have the same rates from the Pacific coast which should be given the Missouri river points—might not now require the company to make good their promise, or, as it is called in the record, their guaranty.

The questions were fully argued by counsel and submitted for decision, but before decision had been filed the defendant carriers had made such changes in their transcontinental rate sheets as would put Lincoln on an equal footing with Omaha and other Missouri river points, and give it the same rates for the transportation to it of merchandise from points on the Pacific coast. The principal grounds of complaint set out in the several petitions were thus removed.

Under these circumstances no opinion is filed, and the complainants have leave to withdraw their petitions.

THE PENNSYLVANIA COMPANY, OPERATING THE JEFFERSONVILLE, MADISON & INDIANAPOLIS RAILROAD, v. THE LOUISVILLE, NEW ALBANY & CHICAGO RAILWAY COMPANY.

THE CHICAGO, ST. LOUIS & PITTSBURGH RAILROAD COMPANY v. THE CLEVELAND, CINCINNATI, CHICAGO & ST. LOUIS RAILWAY COMPANY.

The Commission does not give opinions on abstract questions.

Where a case involving the reasonableness of rates has been disposed of by the carrier assenting to the rates demanded, no opinion will be expressed on the rates which have been abandoned, even though the parties request it.

Such a course is particularly advisable and proper when it is apparent that other parties than the one complained of are interested in the question, and have not had the opportunity to be heard upon it.

MEMORANDUM.

In these two cases unjust discrimination in respect to mileage tickets was charged against the respondents. When the cases were called for hearing, counsel representing all the parties stated to the Commission that such changes had been made by the respondents as removed the cause of complaint. They stated further, however, that the question whether that which had been complained of was in law justifiable was one of importance as well as of doubt, and as precisely the same thing might hereafter be done by the same or other carriers, unless it was adjudged to be illegal, they would be glad to have the Commission consider and pass upon it now, as it would have been required to do had the controversy continued.

The Commission, however, held that, there being no longer a controversy in these cases upon which judgment could be pronounced, the question which had been in issue had now become abstract, and might never again be of practical importance; if it did become important by reason of some one

insisting upon and assuming to exercise the right to do the supposed illegal act, such person would be expected to defend it and present the reasons in its favor.

At present no one was making practical assertion of the right. It was obviously, therefore, a dictate of prudence as well as of propriety to decline to consider the question now. It will be more in accordance with sound principle to assume that if the conduct complained of was illegal, and the parties guilty of it have ceased to violate the law, and are now observing it, they will continue in their observance from this time on. See *In re* Order of Railway Conductors, 1 I. C. C. Rep. 8; *In re* Traders' & Travelers' Union, Ib. 8; *In re* Iowa Barbed Steel Wire Co. Ib. 17; *In re* St. Louis Millers' Association, Ib. 20; *In re* Disabled Soldiers & Sailors, Ib. 28; *Bishop v. Duval*, 3 Ib.

J. T. Brooks, for complainants.

On the same day there was called for hearing the case of *The American Wire Nail Co. v. The Queen & Crescent Fast Freight Line, and others*, in which unjust discrimination in rates on cut over wire nails was charged. In that case counsel stated that the only respondent which had actually made the discrimination had now so changed its rate sheets as to do away with it. It was further stated, however, that the discrimination resulted from the classification of the Southern Railway & Steamship Association, and they desired to have the Commission pass upon the question whether the classification, as it related to the traffic in question, was justifiable. The Commission replied that this would be improper, for the double reason that it was no longer claimed that the respondent who had made the obnoxious discrimination was persisting in it, and also that the classification which it is desired to assail only came in question in the case incidentally, and the parties who may be supposed interested to defend it have not been summoned for that purpose, and are not here.

E. J. Buffington, for complainant.

George Hoadly, Jr., for respondents.

JAMES & ABBOTT v. THE EAST TENNESSEE, VIRGINIA & GEORGIA RAILWAY COMPANY; THE NORFOLK & WESTERN RAILROAD COMPANY; THE SHENANDOAH VALLEY RAILROAD COMPANY; THE CUMBERLAND VALLEY RAILROAD COMPANY; THE PENNSYLVANIA RAILROAD COMPANY; THE NEW YORK, NEW HAVEN & HARTFORD RAILROAD COMPANY; AND THE NEW YORK & NEW ENGLAND RAILROAD COMPANY.

Complaint filed February 18, 1889. Answers filed separately, the last, April 19, 1889. Heard May 2, 1889. Decided September 25, 1889.

1. **GREATER CHARGE FOR A SHORTER DISTANCE.** — *When combined competition by rail and water do not justify it.* The presence of combined rail and water competition at a longer-distance point does not justify a greater charge for a shorter distance while the carrier maintains the shorter-distance rate where such competition is of greater force and more controlling than at the longer-distance point.
2. **SAME.** — *Where freights have paid local rates.* Nor does the fact that the freight is lumber which has paid a local rate over the roads of the defendants or of other railroad companies to the longer-distance point justify such greater charge for a shorter distance.
3. **SAME.** — *Empty cars and return loads.* Nor is such greater charge justified by the fact that the lumber business of the roads of a connecting line or any of them was done in cars which carried machinery to the longer-distance point when profitable return loads were not always to be had.
4. **SAME.** — *Bulk and value of the freight.* Nor does a difference in the bulk and value of lumber justify such greater charge when the carriers in their published rate sheets put the lumber in the same class and at the same rate.
5. **REASONABLE RATES.** — *Distance as a measure of railroad service.* Distance is not always the controlling element in determining what is a reasonable rate, but there is ordinarily no better measure of railroad service in carrying goods than the distance they are carried.
And where the rate of freight charges over one line, on similar freight carried from neighboring territory to the same market, is considerably greater than over other lines for distances as long or longer, such greater rate is held to be excessive and should be reduced.

A. B. Paine, for complainants.

William M. Baxter, for the East Tennessee, Virginia & Georgia Railway Co. and other defendants.

Enoch Totten, for the Pennsylvania R. R. Co.

REPORT AND OPINION OF THE COMMISSION.

MORRISON, *Commissioner* :

This is a complaint of the transportation charges on lumber carried from Johnson City, Tennessee, to Boston, Massachusetts.

The rate of which complaint is made is thirty-six cents per hundred pounds of lumber in the car-load for a distance of nine hundred and eleven miles, though from the more distant point of Atlanta, Georgia, twelve hundred and forty miles, a lower rate of thirty-four cents is charged, which is alleged to be in violation of the Fourth Section of the Act to regulate commerce. From Macon, Georgia, to Boston, the freight charge is the same as from Johnson City, four hundred and seventeen miles the shorter distance over the same line.

The complainants aver that said railroad companies form under joint traffic arrangements one connecting through line and in carrying lumber at these rates perform for others a much greater service for the same compensation and for others again a much greater service for less compensation than is exacted and received from the complainants as shippers from Johnson City. They further aver that the rate so exacted from them restricts and injures their business, that their reasonable request for its reduction has been refused and they are obliged in their trade to ship over said roads. They therefore complain and ask that the Johnson City rate may be so reduced as to bear a just relation to the rates charged from Macon and Atlanta, and that they may be granted such other relief as may be found on investigation to be reasonable.

The defendant Railroad Companies, answering separately, admit that the rates charged and the distances are the same as stated in the complaint, and aver that said rates are made by the East Tennessee, Virginia & Georgia Railway Company, the initial or sending company, and that as forwarders

the other companies are not responsible for the rates so made. Defendants deny that the rates on lumber carried over their roads are unjust or unreasonable, and aver that the reasons justifying the said rates of thirty-six cents and thirty-four cents per hundred pounds, respectively, from Macon and Atlanta, distant thirteen hundred and twenty-eight and twelve hundred and forty miles from Boston, as compared with the rate of thirty-six cents per hundred pounds for the shorter distance from Johnson City to Boston, are as follows:

“*a.*—That the rates in the State of Georgia are fixed and controlled by the Railroad Commissioners of that State, that Commission fixing the charges for transportation to coast cities from mills in the State of Georgia.”

“*b.*—The fact of water competition from Brunswick, Georgia, on the Atlantic ocean to Boston and other North Atlantic points; that, adding the rate from the mills to Brunswick, as fixed by the Railroad Commissioners of Georgia, to the rate given by the coast-line water carriers to Boston, the aggregate is less than the amount charged, as aforesaid, upon the tariffs of the respondents on their through railroad carriage from Macon and Atlanta to Boston.”

“*c.*—A large amount of freight is received at Atlanta and Macon from eastern cities, including Boston, the cars containing which would have to return empty in large part, but for the fact that they can be returned loaded with lumber.”

“*d.*—The reason why the Atlanta charge is the same as that from Macon (the Atlanta charge is two cents lower) arises from the fact that lumber shipped from Atlanta is manufactured at mills a considerable distance from that city, and transported there over local roads before being marketed.”

“*e.*—That the lumber shipped from Johnson City is for the most part poplar lumber, while that which goes from Georgia territory is exclusively Georgia pine; and that the rate per hundred pounds per mile for hauling poplar, by reason of its greater bulk, should reasonably be greater than that for hauling pine.”

The amended answer of the East Tennessee, Virginia & Georgia Railway Company states that the rate from Macon, Georgia, to Boston is two cents higher than from Atlanta to Boston, the statement in its original answer that the rate was the same being a mistake—and for further answer:—

“That poplar lumber is of much greater value than the yellow pine lumber of Georgia, and upon that ground also it should bear a higher rate than yellow pine.”

The rate of charges and the distances to which the charges apply are admitted to be as stated in the complaint, and additional facts are found on investigation, viz:

I. The complainants are lumber merchants and have in connection with their business invested a considerable sum at Johnson City, Tennessee, where they buy poplar lumber and ship it over the defendants' roads to Boston, the complainants' place of business. The lumber is there sold in competition with similar lumber carried to that market at lower aggregate rates.

Some of the points from which the competing lumber is shipped are:

		Miles.	Rate.
Parkersburg and Kanawha, }	West Va., distance from Boston, 860,	26 cts. per 100 lbs.	
Milton and St. Albans, }	“ “ “	1,000, 29	“ “
Asheville and Hot Springs, }	N. C., “ “	935) and 33 973)	“ “

II. The defendants' several lines form a through and connecting line over which lumber and other property are carried to Boston and other northeastern points from various places in the States of Tennessee, Georgia, Alabama, and Mississippi, on the lines of the East Tennessee, Virginia & Georgia Railway Company, including Johnson City, Tennessee, and Atlanta and Macon, Georgia, on one and the same line. Such through line extends from Boston southwesterly to Cleveland, Tennessee, and from there curves southeasterly to the coast at Brunswick, Georgia. Defendants have another line, being the same as that described above, from

Boston to Cleveland, and from there extends through Chattanooga, Tennessee, Decatur, Alabama, Corinth, Mississippi, and to the Mississippi river at Memphis, Tennessee.

III. The charges complained of were in force in 1885, when complainants commenced shipping lumber from Johnson City. Of the Atlanta rate, 34 cts., the East Tennessee, Virginia & Georgia Railway Company receives 8 9-10 cts. for the haul over its line to Bristol, and the other defendants 25 1-10 cts. for the haul over their lines east of Bristol. The Johnson City rate, 36 cts., is divided, 4 cts. to the East Tennessee, Virginia & Georgia Railway Company for the haul to Bristol and 32 cts. to the lines east of Bristol. The 4 cts. which goes to the East Tennessee, Virginia & Georgia Railway Company is arbitrary and would be the same under the traffic arrangement of defendants if the through rate were reduced or increased. The local rate from Atlanta to Johnson City is 12½ cts. per hundred pounds.

The defendants' rates on goods of the first class are :

	Miles.	
Between Boston and Atlanta.....	1240	\$1.14 per 100 lbs.
“ “ Macon.....	1328	1.09 “
“ “ Moore's Mills..	1251	1.33 “
“ “ Holton.....	1318	1.33 “
“ “ Bullard's... ..	1343	1.33 “
“ Memphis and Johnson City..	527	1.08 “
“ “ “ Bristol.....	552	.92 “

IV. The Railroad Commissioners of Georgia are authorized to establish maximum rates in that State, and have established rates on lumber in the car-load of 24,000 pounds, viz :

	Miles.	
Between Atlanta and the coast at Savannah....	295,	\$24.00
“ “ “ Brunswick....	279,	23.00
“ Macon “ Savannah.....	192,	20.00
“ “ “ Brunswick.....	189,	19.00
“ Atlanta and Macon.....	90,	13.00

The rates to the coast combined with the ocean rate usu-

ally prevailing from coast points make, nominally, a lower rate by rail and water route from Atlanta and Macon than the all-rail rates charged by the defendants. The Southern Railway & Steamship Association, composed of the principal lines of transportation, both rail and water, between eastern cities and points in the southeastern States, assumes to adjust rates from and to certain designated association and competing points in the southeastern territory, including Atlanta and Macon, Georgia. In such adjustment the right is conceded to the water routes to take a rate below the all-rail route, ranging from 8 cts. per hundred pounds on goods paying the highest rates, to 2 cts. on goods paying the low rates usually imposed on lumber. In practice these adjustments are not respected and lumber is carried by coast routes from Atlanta to Boston as low as 26 cents per hundred pounds. The all-rail route has the advantage in time required for delivery, in risk, in expense of handling and in being less damaging, especially to the better qualities of pine flooring.

V. Georgia lumber is largely manufactured at mills near the coast and goes to Boston and other north Atlantic points by the part rail and water route through Brunswick or Savannah at rates not above 22 cts. From these mills, or some of them, the all-rail route is 1,400 miles long, and from others longer.

VI. For Atlanta and Macon business to the coast the East Tennessee, Virginia & Georgia Railway Company, defendant, which reaches the coast at Brunswick, competes with the Central of Georgia, reaching the coast at Savannah.

For Boston business, all-rail, the defendants compete at Macon with the Central of Georgia and connections. From Atlanta defendants' chief competitor, all-rail, is the Richmond & Danville R. R. and connections. The several all-rail routes, including defendants', make the same rate from crossing and competing stations to north Atlantic cities, and all charge higher rates for shorter distances from and to intermediate places in Georgia and adjacent States. For Johnson City business the defendants have no competitor.

VII. It is in testimony that the lumber business of the East Tennessee, Virginia & Georgia road from Georgia last year was largely in cars which carried machinery to that State. The entire tonnage north and south over that road is not stated for any year or series of years. The tonnage over the line of the Norfolk & Western Company is about the same in both directions. No testimony was offered as to the tonnage in either direction over the other defendant roads.

VIII. The lumber shipped from Atlanta is first shipped there over the East Tennessee, Virginia & Georgia or some other railroad. The Johnson City lumber is poplar. Georgia lumber is yellow pine, part kiln-dried flooring and part plank and dimension stuff used for car construction and house building, for which purposes poplar is not used. In Boston the selling price of kiln-dried yellow pine is \$40; of other yellow pine \$20, and of poplar \$30 per thousand feet. At Atlanta pine is worth from four to fourteen dollars, and the selling price of poplar is greater than pine. Poplar is lighter, but more is loaded, and the freight is more on the car load at the same rate per hundred. In the defendants' published classification of lumber yellow pine and poplar are classed together and given the same rates. They are so classed and rated as a rule by the carriers of the country.

The provision of the Act to regulate commerce which makes the greater charge for the shorter distance unlawful declares :

"SEC. 4. That it shall be unlawful for any common carrier subject to the provisions of this Act to charge or receive any greater compensation in the aggregate for the transportation of passengers or of like kind of property, under substantially similar circumstances and conditions, for a shorter than for a longer distance over the same line, in the same direction, the shorter being included within the longer distance."

That the charges complained of are in violation of this section of the statute if the transportation from both Atlanta and Johnson City is done under substantially similar circum-

stances and conditions is not questioned. The defendants deny that it is so done. They contend that they and other carriers of traffic by all-rail routes north to north Atlantic points compete for such traffic at Macon and Atlanta with carriers by rail and water, by rail south to the coast, thence by sea to such north Atlantic points; that no such competition exists at Johnson City; and that the presence of this competition at the former two places and not at the latter makes the circumstances of the traffic dissimilar and justifies the higher rate for the shorter distance. This contention is based on the supposition that the competition by the coast route compels the acceptance of thirty-four cents from Atlanta, and that thirty-four cents is less than what may be reasonably charged from Johnson City.

The expense of handling and carrying the various classes is so unequal that any effort to fix the cost of moving any particular class of freight must be satisfied with an intelligent estimate. The average for all classes over the road making this rate was last year five and eight-tenths mills per ton per mile. Lumber is inexpensive freight and very much below the average in cost of transportation. This cost is so important an element in determining what transportation charges may lawfully be, that the difference in charges on the several classes indicate something like the relative difference in the cost of carrying each.

The fact that railroad charges are two, three, or more times as high on the mass of freights carried, and lower on none, practically, than on lumber, shows how very much below the average cost on all freights the cost of carrying lumber must be. But comparatively low as the transportation expense is, it is still questionable, when the lumber is of a kind not subject to injury from carriage by water, whether or not carriers by all rail can share in the Boston traffic, from the productive lumber regions near the Georgia coast, without imposing some part of the burden on shorter distance freight shipped from more interior stations. Such carriers to take part in this traffic from stations nearer to the coast than to Atlanta and Macon must accept less than four cents per ton per mile for the haul to Boston.

The defendants' rate of charges from Atlanta and Macon is scarcely five and a half mills per ton per mile. This is not claimed nor believed to be higher than is reasonable for the service, and some greater charge from these places might be legal. But moderate as this charge may be, its long continuance must be taken as proof that it is profitable to the roads.

Yet with this all-rail rate in force lumber is largely carried by the part rail and water route, the all-rail route chiefly relying on orders for shipments to be made immediately, or from the interior of Georgia, or to interior eastern points, and on shipments of a kind not safely made by water. It thus appears that the competition is such that to share in this business the defendants must accept a rate proportionally lower than what might be reasonable for all their business of a like kind from all their stations, but it by no means follows that the rate accepted is below what would be reasonable from Johnson City, the shorter distance by three hundred and twenty-nine miles.

• Competition at longer distance points with coast-route carriers which might warrant the making of a rate proportionally lower than what might be reasonable on all the business of a road can not lawfully operate to increase the charges for shorter distances. Nor could such competition have that effect if it were such as to justify a higher rate for some shorter distance. In either case it might have the effect of lowering one or the other reasonable rate, or both, to avoid unjust discrimination or prevent undue advantage to some particular traffic, locality, or person. For instance, we may assume the Johnson City and Atlanta lumber rates should be less disproportionate, and that the reasonable rate would be from the former thirty-three, from the latter thirty-seven, and from Rice City, half-way between the two, thirty-five cents. Dissimilar circumstances which might justify a reduction of the Atlanta rate from thirty-seven to thirty-four cents could not increase the reasonable rates for the two shorter distances.

The ascertained facts taken in connection with the rates in dispute do not establish defendant's contention that the

rail and water or coast-route competition is so controlling as to compel the all-rail lines to accept the lower rate from Atlanta. The Georgia Railroad Commissioners' maximum rate from Macon to the coast is lower by four dollars on the car-load than the Atlanta rate to the coast, and the through rate by the coast is lower from Macon than from Atlanta. If the low cost of the part rail and part water route could compel the low rate of thirty-four cents from Atlanta, it would force a still lower rate at Macon instead of admitting the higher rate of thirty-six cents maintained there. The position of the defendants that coast-route competition forces and justifies a lower rate from Atlanta than from Macon and Johnson City is contradicted by the higher rate at Macon, from which the coast-route is shorter, less expensive, and at which the competition is more controlling.

To avoid its effect or to explain this contradiction in their rates the defendants state the fact that lumber shipped from Atlanta is first carried there by railroad and has paid a local rate from the mills, and this fact is pressed as a reason why the charge from Atlanta should be lower than from Macon.

When freight is offered to the defendant companies for shipment it is their duty to take it for what they can get, not above a reasonable compensation for the service to be performed by them and not below a rate which will yield them a profit. The duty of equalizing rates beyond their through line is not imposed on them as receivers of freight for shipment. What concerns them relates to the transportation of the goods and the charges for the service. The origin of the goods or the fact that lumber comes to their roads from the mill or over some other railroad or over a wagon road is not an element which enters into the question of what they may reasonably demand for the transportation services they are to render. This equitable rule is not altered in the case under consideration by the statement of the traffic manager of one of the defendant companies who, as a witness, said: "We have already brought that lumber from the local cities to Atlanta." When freight is taken up at Macon or elsewhere and delivered at Atlanta for sale or other purpose not incident and necessary to through transportation, the shipment

is complete, and when such freight is forwarded the carriage from Atlanta is a new undertaking. The character of a local shipment between the cities or between the mills and cities of Georgia is the same when made by the defendants or some one of them as if made by some other railroad company, and whether made by one or the other it cannot legally have the effect of raising or lowering the charges for transportation of the freight when re-shipped.

The investigation shows that the Atlanta Lumber Company, doing business at Atlanta, owns saw-mills at Amoskeag, Georgia, on the East Tennessee, Virginia and Georgia road, nearer the coast than Atlanta or Macon. The rule insisted upon by the defendants permits the Lumber Company to bring its lumber through Macon to Atlanta for sale, and if that is not satisfactory, then the lumber may be re-shipped to Boston or other markets two cents lower, because it has once paid a railroad charge. No such preference is offered to the Lumber Company or other shippers who would test the Macon Market. When that market has been tried without success the property may be re-shipped, but at no lower rate in consideration of the freight having paid a local charge over a railroad to Macon; that preference and advantage is given to Atlanta alone. The rule contended for makes unjust discrimination easy and encourages undue preference to particular towns and cities to the unreasonable disadvantage of others. The distance to Atlanta from Amoskeag is greater than to Macon, but the rule insisted upon applies as well to freight carried the same distances to both places, when carried by railroad. It was shown that there are no mills at Atlanta, and that lumber is not manufactured there. The same could be shown, and is true, as to Macon, but the fact does not affect the question.

The defendants further urge in justification of their rates what is stated in the testimony of one of their officers. He says, "We carry a good deal of machinery into Georgia, and lately have been carrying a great many iron rails;" and, again, "almost our entire lumber business during the past twelve months has been brought from Georgia in cars that went there loaded with machinery." This was said by the

traffic manager of the East Tennessee, Virginia and Georgia Railway Co. of that road and its lumber traffic in the past year, but gives us no information as to the tonnage of the road other than lumber. We are without information as to the aggregate of its tonnage in different directions, while over the Norfolk & Western, which connects with the East Tennessee, Virginia & Georgia, traffic north and south is nearly equal. That the defendants have carried freight to Georgia in cars for some of which profitable return loads were not always obtainable will hardly be disputed. But there is nothing in this fact nor does the investigation show anything to warrant the conclusion that the freight over defendant's line is exceptional in the direction of movement or varies from the rule applicable to roads generally that at one period or season of the year more freights go in one direction; at another season more in the opposite direction. The rates in question are not casual and the result of a condition of things first existing in the last twelve months. They were permanently established and substantially the same before the Act to regulate commerce was passed. When the preponderance of freight is so largely in one direction that the supply of empty cars exceeds the demand for return loads at full rates, it is not unlawful to encourage business by affording transportation on less profitable terms. Such a policy of business prudence applied to the case we are considering does not make it necessary to receive any greater compensation for the shorter distance. The receipts would be the same and the expenses less if the empty cars were drawn to Johnson City and there loaded with lumber at the same rate obtainable for the longer distance.

Next it is urged in justification of the rates made that the Johnson City "rate per hundred pounds per mile" should be greater because the poplar is of greater bulk, and also that it is of much more value, and on these grounds should bear a higher rate than the yellow pine. The space required is rightly taken into account in the adjustment of freight charges—when the bulk is so considerable in comparison with weight as to occupy space which if taken up by heavier freight would yield larger receipts. This is not such a case.

Here it is shown that Georgia pine lumber is of such a character and manufactured in such lengths and shapes that the car-load is lighter and the freight charges less at the same rate per hundred pounds than on the car-load of poplar. It thus appears the expense to the carrier is not greater for the poplar. The ascertained facts show that the difference in the price at the place of shipment, with the transportation charges added, and the price in the eastern market leaves the larger profit on the pine. The service is therefore worth more to the dealer in pine. Some varieties of pine are worth double as much as others, both in Georgia and in Massachusetts markets. In Boston the poplar is worth ten dollars per thousand less than some qualities of pine and ten dollars more than other varieties. The defendants have in their published rate-sheets classed all descriptions of pine and poplar lumber together and named the same rate on each. We think they are correctly so classed and rated.

The disproportion in the charges on lumber made by defendants is found in greater degree in their charges on goods classed and rated higher. The Boston rate from Atlanta on goods of the first-class is \$1.14. From Moore's Mills, ten miles farther south, it is \$1.33. From Macon, still nearer the coast, it is \$1.09. From both Holton, ten miles farther from the coast, and Bullard's, fifteen miles nearer to the coast than Macon, the rate is \$1.33. The alleged existence of coast-route competition by rail to the coast, thence by ocean carriage, is urged as a justification for this system of transportation charges. But we find the same system prevailing where the influence of the Georgia Commission regulation and the coast-route competition is not felt. Over defendant's Memphis line the rate between Memphis and Bristol is ninety-two cents. Between Memphis and Johnson City, the shorter distance, it is one dollar and eight cents. And while the local Georgia rates to the sea and the low cost of ocean transportation are influential in fixing lumber and other rates, these relatively unequal rates are largely the result of a vicious system under which carriers too frequently exact unreasonably high rates at places where there is no other carrier to take the freight.

A further complaint is that in carrying lumber at the rate named the defendants perform for some of their customers greater service for the same compensation, and for others greater service for less compensation than is demanded and received from the complainants. The relative inequality of the charges made as compared with the service rendered is here presented and urged by the complainants as affording evidence that the rate charged from Johnson City is unjust and unreasonable and should be reduced. Practically, the only matter of interest to the complainants is how much they are to pay and to the defendants how much they are to receive for carrying lumber from Johnson City to Boston. The complainants aver that their business is injured, its growth and development prevented, by these freight charges. Whatever may be the effect of the disputed rates on the complainant's business, it will hardly be questioned that long-distant transportation charges on lumber make so large a part of its price that any considerable disadvantage in the rates paid prevents that fair competition in which the public has an interest.

The transportation charges on lumber from Johnson City to Boston are considerably more in the aggregate than they are from West Virginia stations on the Baltimore & Ohio road nearly as distant, or from West Virginia stations on the Chesapeake & Ohio road more distant, or from North Carolina stations on the Richmond & Danville road more distant. Distance is not always the controlling element in determining what is a reasonable rate, but there is ordinarily no better measure of railroad service in carrying goods than the distance they are carried. Asheville and Hot Springs, North Carolina, are practically in the same territory with Johnson City, and on a line over which, in the absence of evidence to the contrary, we must assume freights are no more steady or in no larger volume than over the line of the defendants. Unexplained, these lower rates are not without significance, for in comparison with them the Johnson City rate is excessive. In the division of the Atlanta rate twenty-five and one-tenth cents per hundred pounds (\$60.24 on the car-load) is the part accepted by the other defendant companies for the haul

over their roads east of Bristol, the terminus of the East Tennessee, Virginia & Georgia road. The fact that it is accepted and yields a profit tends to establish the fact that their portion of the Johnson City rate, which is thirty-two cents (\$76.80 on the car-load) for the same service, is excessive, and that some lower rate would be reasonable.

Under the defendants' traffic arrangements any reduction made in the through rate will be borne by the lines east of Bristol, and a reduction to thirty-three cents, which would equalize the charge from Johnson City, Asheville, and other points in adjacent territories, would leave to the roads east of the East Tennessee, Virginia & Georgia twenty-nine cents per hundred pounds, or nine dollars and thirty-six cents more on the car-load than they accept for the same service on Atlanta business.

The traffic manager gave it as his expert opinion, and we doubt not honestly enough, that thirty-six cents from Johnson City was a reasonable rate. Opinion as to what is a reasonable rate is so largely ideal that it needs the support of convincing facts which are mainly in possession of railroad companies. The only fact offered for this purpose was the statement that operating expenses of his road, the East Tennessee, Virginia & Georgia, for freight of all classes were five and eight-tenths mills per ton per mile. The operating expenses on the Norfolk & Western were less than four mills, which is exceptional; but it has been already shown how low in comparison with the average on all freight must be the expense on such freight as lumber. The difference in cost of transportation of various classes of freight is so variable that the average on all affords little assistance in ascertaining what is reasonable for carrying the very low grades which are moved so much below the average cost.

The claim that the charges the complainants are made to pay are excessive is sustained by facts so numerous and of such a character as to be convincing. Twenty-nine cents for the haul east of Bristol on Johnson City business will, in our opinion, be full compensation to the roads which receive but twenty-five and one-tenth cents for the same service on business from Atlanta. The highest rate paid from the pop-

lar-producing territory adjacent to Johnson City on like traffic destined to the same market is thirty-three cents per one hundred pounds, and any higher rate than thirty-three cents from Johnson City is, as we believe, unreasonable and should be reduced.

ABIEL LEONARD *v.* THE CHICAGO & ALTON RAIL-
ROAD COMPANY; AND LOGAN B. CHAPPELLE *v.*
THE SAME COMPANY.

Complaints filed March 14, 1889. Answers filed April 8, 1889. Heard May
29, 1889. Decided September 25, 1889.

A practice had existed on the part of certain carriers of live cattle to make a car-load rate irrespective of weight, leaving the shipper to load into the car as many cattle as he pleased and was able to put into it. The carriers substituted for this practice the rule that while naming a car-lot rate they prescribed a minimum weight for a car-load and then charged by the hundred pounds in proportion to the car-lot rate for any excess over the minimum. *Held* that this rule was not unlawful.

Prima facie the new rule is more just and reasonable than the practice it supplanted, since the charge is more in proportion to the service rendered.

The fact that some difficulties are found to exist in the prompt and accurate weighing of the cattle is not a reason for abolishing the new practice, but rather for improving and perfecting it.

The fact that by the action of certain state commissions a car is permitted to be loaded by the shipper at discretion without the car-lot rate being affected thereby is not a reason for adopting the like rule in interstate traffic if that course is found not to be most just and politic.

The grant to the Federal Government of the power to regulate interstate commerce is full and complete, and can not be narrowed or encroached upon by state authority, either directly or indirectly. The fact, therefore, that one or more states have adopted a particular regulation is not a reason for applying it to interstate commerce if in itself it appears to be objectionable. State action will always be treated with the highest deference and respect, but can not be allowed to control in matters within the Federal jurisdiction.

W. M. Williams and *A. F. Rector*, for complainants.

William Brown and *A. F. Walker*, for respondent.

REPORT AND OPINION OF THE COMMISSION.

COOLEY, *Chairman* :

These two cases raise the same questions and were heard together, it being agreed that all the evidence that should be relevant in one case would be equally applicable to the other.

The complaint in the case first entitled recites that complainant is a resident of Saline county, Missouri, and engaged in the business of raising, feeding and shipping stock; that on January 21, 1889, being desirous of shipping nine car-loads of cattle over the Chicago & Alton Railroad from Mt. Leonard station, in said county of Saline, to the city of Chicago, he offered for such shipment one hundred and eighty head of cattle, being under the customary rule nine car-loads; that on making such offer complainant was informed by the local agent of respondent that the rate now charged by respondent was twenty-four cents per hundred pounds in car-load lots of twenty thousand pounds, and if more than twenty thousand pounds were loaded into any car, the excess would be charged for at twenty-four cents per hundred pounds; that complainant was further informed by said agent that twenty thousand pounds constituted a car-load of cattle, and the rate to Chicago on the same was forty-eight dollars; that under said rule and regulation complainant was compelled to load said one hundred and eighty head of cattle into twelve cars, instead of being permitted to load the same into nine cars, and that respondent charged complainant the sum of \$590.88 freight thereon, when in fact it should not have charged more than \$450, or fifty dollars per car for nine cars. Complainant alleges that respondent has made an unreasonable and unjust charge, and should be required to refund \$140.88; that said overcharge was occasioned by the fact that on the first day of January, 1889, respondent adopted the system of weighing cattle, and charging for the shipments at a given rate per 100 pounds; that such system is unjust and inequitable in this, that the weighing is done in Chicago by respondent in its own way and style, and that the extra time taken to handle the stock after it has arrived at its destination is such as to work an injury to the shipper; that often the delays are such as to prevent the stock being unloaded in time to be put upon the market in proper shape, allowing time to feed and water after unloading, and that such was the case in regard to the shipment made as aforesaid. A refunding of the excess charged is prayed for.

The answer of the respondent denies that complainant was

compelled to load any particular number of cattle into cars, or that he was in any way restricted as to the number of head or weight to be loaded into the same, except in so far as he was restricted for the safety and comfort of the animals by the limit to the capacity of the car. Respondent further says that when complainant's cattle were received, its regular tariff rate for the transportation of cattle from Mt. Leonard station to Chicago was 24 cents per 100 pounds, and the minimum charge was for 20,000 pounds per standard 30 ft. car; that complainant was charged the regular rate and no more; that the distance from Mt. Leonard to Chicago is about 415 miles, and the charge is in all respects just and reasonable, being less than one cent and one-fifth of a cent per ton per mile for a service which is attended with great risk on the part of the carrier, and which requires special attention and the greatest care and watchfulness to secure prompt movement and prompt and safe delivery; that the rate on an average is less instead of greater than the old rate of \$50 per car; that the rules in force on respondent's road protect the shipper from excessive charges, and also allow him a reasonable deduction for shrinkage in weight; the charge for weight transported, if in excess of the minimum, being always less than the actual weight as shown in the account sales.

Respondent further says that the change from the old method of charging so much per car for the transportation of cattle—a method which gave the shipper an incentive to overload the cars, as well as increased the liability of the carrier—to the present method of charging by the hundred pounds was made not only for the protection of respondent but in the interest of the shipper. Under the present method the shipper has no incentive to overload the cars, and the animals will not be as likely to reach the market in a distressed or damaged condition, as under the old method; the carrier's liability is thereby lessened, and it receives compensation based on actual weight carried. Respondent denies that the system of weighing cattle in force on its road is unjust or inequitable, or that it causes damaging delay.

The allowance for shrinkage is five hundred pounds per

car, and respondent states as follows the considerations that led to the adoption of the system of weighing cattle and charging by the weight:

First: Many abuses had obtained under the old system, and inequalities in charges could not be avoided without an entire abandonment of the system. When cattle cars were first constructed, and up to a short time ago, the 27½ or 28 ft. car was generally in use, and it was estimated to carry comfortably 20,000 pounds of cattle. Cattle by the car-load were shipped almost exclusively eastwardly, and in practice it was found that the 28 ft. car was not adapted to profitable back-loading, as the freight which could be profitably and safely shipped in cattle cars consisted chiefly of lumber and iron or steel rails; hence cars of greater length were gradually introduced, until various lengths of car, varying from 27½ ft. to 39 ft. were in use, with the consequent result that much greater loads could be carried in the longer cars than in the shorter ones. Whereupon shippers were always desirous of procuring the longer cars, and from the necessity of the case an unavoidable discrimination resulted, since there would be a very large variation between the load drawn for the shipper having the short cars and the shipper having the long cars.

Second: Experience proved that some shippers, prompted by cupidity, would greatly overload and crowd the cars, to save the difference in freight. The result of this practice was, that the companies would not receive the same compensation for the same service from different individuals, and would often suffer great delays, necessarily resulting from overloading; for example, if a single car in a train of twenty cars should be overloaded, the stock therein would often "get down," and the train would have to be stopped from time to time "to get up the downs," which necessitated unloading and reloading, thereby delaying the whole train of properly loaded cars and entailing loss of time to the carrier and all other shippers, and resulting in large and frequent claims, both from the shipper in fault and those not in fault.

Third: The shipper of large fatted cattle would have a

great advantage over the shipper of lighter cattle, in that he could and would, oftentimes, load as high as 30,000 pounds in a single car, whereas the shipper of light cattle would not be able to put in an average car more than 20,000 pounds.

Fourth: Variation of the sizes in cattle cars on the several roads, and the willingness of some shippers and the unwillingness of others to overcrowd the cars, together with the practice of treating a car-load as a car-load irrespective of weight, led to great variations and discrimination in car-loads through what is in effect underbilling, which is believed to be unjust and unlawful. In some cases one car would be found to contain from one-third to one-half more pounds than another, the difference being caused by the condition and size of the cattle. Thereby a gross injustice was worked to the shipper having the lighter load, and it was impossible to equalize and adjust the variations with substantial justice to all concerned, though efforts were made to do so.

Respondent avers that the system of weighing adopted by the several railroads works no wrong or injustice to the shipper, but, on the contrary, results to his advantage in this: The weighing is done at the destination of the trip, after all shrinkage has taken place, and before the watering and feeding which is furnished after unloading, and the cars are weighed in motion to save delay and almost invariably weigh less than when placed standing still on the scales, the draught having a small tendency to lift the cars drawn. Also, 500 pounds in addition to the 20,000 is allowed to the shipper on each car without charge, to make assurance of justice to him. Respondent avers on belief that in no instance has a car-load of cattle weighed as much when weighed for the purpose of fixing the amount of freight to be charged as when weighed by the shipper to the purchaser, and respondent would gladly accept the weight by which the cattle are sold by the shippers if shippers and their salesmen or commission merchants would furnish the same.

Respondent further says that the system of collecting freight upon cattle by the car-load in force prior to January 1, 1889, was about that time changed to the system now in

use, under which freight is collected by the hundred pounds ; that this change was made contemporaneously by all or nearly all the lines operating west and southwest of Chicago ; that the former system was obviously unjust, and was claimed to be illegal, and that it was not practicable to avoid the evils attending it, except by an abandonment of the car-load system and the adoption of the hundred-pound rate.

The pleadings in the second entitled case were substantially the same as in the first, and the abstract above given is sufficient to present the issues in both. Much evidence was given on the hearing, but we do not think it necessary to abstract it for the purposes of an opinion. The questions in dispute, it will be seen, are few in number, and in discussing them, as we shall do with brevity, the evidence will be stated so far as it may seem to be essential.

First: It is contended on the part of complainant that the rate now charged by respondent, of twenty-four cents per hundred pounds, is excessive and therefore illegal. This the complainant seeks to establish, not by offering proof directly tending to that end, but by showing that the former charge by the car appears to have been satisfactory to respondent, and must, therefore, be deemed to have been sufficiently remunerative, and that the charge by the hundred pounds upon the consignment made by him, was in the aggregate very much above what would have been the charge by the car under the old system had he been allowed to load the cars as he desired and requested. He argues, therefore, that the change in method is a great increase in the rate, which, having been presumptively remunerative and satisfactory before, is by the very fact of increase now shown to be excessive.

Respondent meets this charge with the allegation that in point of fact there has been no increase ; that its books show that it receives no more now upon all the cattle transported, in proportion to weight, than it did formerly ; the charges being more in some cases and less in others only because they are more equally and justly imposed. Some evidence is offered tending to prove this allegation.

Upon this branch of the case we have only to say that, except as it bears upon the question whether the abandonment of the system of charging by the car-load was justifiable, the evidence offered on the part of complainant is too inconclusive to form the basis for just conclusions. It is not shown, except in the inferential way above mentioned, that the charge made by the hundred pounds is too high, nor is the inference that the present rate is an increase over the former sufficiently established by the evidence. The fact may be as the complainants have alleged, but the evidence is inadequate to justify a finding that either party has sustained its allegations on this branch of the case by proofs. We are therefore compelled to leave it out of consideration in such opinion as we shall express upon the matters in controversy.

Second: It is objected to the rule of charging by weight that the weighing is inaccurate, and necessarily attended by damaging delays, and that the practice for those reasons should be held to be inadmissible. The like objections might undoubtedly be made in other cases where the carriers refuse to make rates for car-loads irrespective of weight, and if they are held to be valid, the effect must be to overrule the action of the carriers in respect to many other articles of traffic which are now taken on car-lot rates, but with a maximum weight and a charge for all excess. But surely there can be no insurmountable difficulties in the way of a prompt and accurate weighing of car-loads; it must be possible to provide methods that shall be unexceptionable; and if those now in use are defective, it does not by any means follow that we must for that reason conclude that the practice of charging by weight is illegal and must be abandoned. If the practice is right in itself, the fact that it does not now operate perfectly and without friction is a reason for improving, not for abolishing it; and the attention of parties concerned should be given to the subject with a view to removing the incidental causes of complaint. Nothing in the evidence submitted in these cases tends to show that a weighing which shall be at once reasonably accurate and reasonably prompt is not entirely practicable.

Third: The leading question in the case to which all others are subordinate, is whether the rule of prescribing a limit by weight when the car-lot rate is given, and charging by the hundred pounds for all excess, is legal and admissible. If it is, and the carriers have established it, we can not order it abolished, even though we might think the former practice to have been equally admissible. We do not undertake to decide between methods, either of which would in point of law be unobjectionable; and we must, therefore, in the controversy submitted to us be able to show that the new rule in its practical operation results in some injustice, some inequality, some discrimination, in short, in some illegality, before we can order the restoration of the system which the carriers have abandoned.

Respondent in its answer has set out with some fullness the reasons for the change. Among these is the fact that under the old system the shipper was tempted to overload the cars in order to make a saving in the carrier's charges, and that this resulted in injuries to the cattle through their getting down and being unable to rise. The carrier was in consequence, it was said, subjected to delays and also to claims for damages. This allegation was met by the testimony of witnesses for the complainant, that the cattle were carried more safely when closely packed, being then less liable to get down, and less likely to be injured by a vicious use of horns. It was also said in argument that the interest of the shipper was sufficient security against injudicious overloading. We do not understand, however, that under the present system the shipper is precluded from packing the car as closely as he may think best. When the minimum weight for a car-load is in, he may add to it to any extent that he may think safe and prudent, and may pack his cattle as closely as he may deem desirable. But as he must pay by the hundred pounds, he is not tempted to go beyond the bounds of safety and prudence in order to make a saving in the carrier's charges. If, therefore, one shipper thinks close packing best, he may pack closely, but if another thinks that method cruel and unsafe, he will not be charged out of

proportion because he declines to adopt it. The shipper being thus left to exercise his own judgment in the manner of loading, it might be conceded that a close storage of the cattle in the cars is wholly unobjectionable, and even desirable, and yet that fact would afford no ground for abolishing the practice of charging by weight, for it would not show or tend to show that such a practice was either unjust or unreasonable.

Prima facie the system of charging by weight is more just than any other. It is the only system whereby the charge is made proportionate to the service rendered. It is the only system whereby inequalities as between shippers, resulting from differences in the size of cars, can be obviated. As long as those differences exist, there is always room for favoritism, unless the car-load charge is accurately apportioned to the size of car; and this we think has never been attempted, for the reason, doubtless, that because of the great diversities it was seen to be impracticable. The reasons ought to be very imperative which would require the abolishment of a rule which excludes favoritism to make way for another which not only admits of but invites it.

We are pointed to no such reasons in this case. The charge by the hundred pounds is not only *prima facie* most just, but it is in accord with the general practice of the carriers in making rate sheets for other commodities. The general rule is to charge by weight, where weight can be a proper measure, and when a car-lot rate is prescribed, to fix a minimum for the load to be taken as the car-lot, and to charge by the hundred pounds for any excess, just as is now done in respect to cattle by this carrier. The cases must be very few in which it would be deemed reasonable or admissible to allow the shipper of general merchandise to load up a car at discretion without the quantity being taken into account in determining the carrier's charges.

Upon the hearing it was shown that by state law, or by the rulings of state commissions, the shipper in Kansas or in Missouri of cattle consigned to a point within the state would be entitled to load the car at discretion without the charge being increased thereby. It was said that the rule

was the same in some other States, and it was urged that the Commission should conform thereto, not only because the State action must be held *prima facie* just and right, but also because the interstate shipper would be placed at a disadvantage relatively to the shipper whose consignment did not cross a State boundary.

The Commission will always in the discharge of its duties pay the highest deference and respect to State action. It appreciates as fully as any one possibly can the importance of all laws and all action on the subject of railroads and their work being harmonious. The Commission can not ignore the fact, however, that the people of the United States in framing their Constitution conferred upon Congress the power to regulate commerce between the States. The power was not restricted in the grant, or made subject to any condition whatever; it is therefore full and complete, and any State action that would limit or hamper it would obviously be an encroachment upon the domain of federal authority. Neither of the States named would make any question of this; nor would their public authorities prescribe any rule or make any order that should in express terms apply to interstate commerce. This being the case, it can hardly be reasonably urged that State regulations of local commerce should be rules for the regulation of interstate commerce also. If it were conceded that they should be, and the concession should be acted upon, the federal power to regulate commerce would to that extent be surrendered, and the State authorities would do by indirection, and perhaps without intending it, what they would claim no right to do by direct action. The mere statement of the result to which the argument of complainant leans is its sufficient refutation. It is to be remembered, also, when the question of conforming to State action in the regulation of interstate commerce is under consideration, that the policies of different States on railroad subjects are by no means certain to be the same; they may be identical, but they may also be diverse, so that the attempt to come into conformity with them might add to confusion instead of producing harmony. Such may not be the case in this instance, but it is quite likely to be in some other.

These are reasons why State action can not in any case be accepted as conclusive in itself when a regulation of interstate commerce is to be made. It is entitled to respect, and we should examine it in any case in the expectation of finding ourselves in full accord with it. It is always possible, however, that local policy might be found to have resulted in regulations that the Commission believed could not be applied generally with good results; and in such a case, the better regulation should be made. Such a case we have here. We think the action of the carriers in prescribing rates for the transportation of cattle by weight instead of by the car-load is not in itself illegal or unjust. Instead of being so, we find it to be in harmony with what in our opinion should be the general practice, not only in respect to this article of commerce, but to the subjects of transportation in general, whenever weight is the proper measure for the carrier's charges.

It follows that the order applied for can not be granted in either of these cases on the evidence as it stands. The question whether the rates charged are reasonable is not passed upon for the reason above stated, and in respect to that question the cases are retained for such further action, if any, as the complainants may see fit to take.

HENRY McMORRAN AND EDMUND B. HARRINGTON v. THE GRAND TRUNK RAILWAY COMPANY OF CANADA AND THE CHICAGO & GRAND TRUNK RAILWAY COMPANY.

Testimony taken by deposition at Port Huron and Chicago, and Case submitted on the depositions and printed arguments. Decision filed, September 25, 1889.

Though rates are not required to be made on a mileage basis, nor local rates to correspond with the divisions of a joint through rate over the same line, mileage is usually an element of importance, and due regard to distance proportions should be observed in connection with the other considerations that are material in fixing transportation charges.

When rates on the line of a carrier are on their face disproportionate or relatively unequal, the burden is on the carrier to justify them when challenged.

Grain and grain products classified alike are presumptively entitled to equal rates, and if a difference is made by a carrier it assumes the burden of sustaining it by satisfactory evidence.

Upon complaint against the Grand Trunk Railway of Canada for alleged unreasonableness of a rate of eight cents a hundred pounds on grain and ten cents a hundred pounds on grain products, from Port Huron to Buffalo, as compared with a through rate of fifteen cents a hundred pounds from Chicago to Buffalo over the line formed by that road and the Chicago & Grand Trunk road,

Held, That though the local rate from Port Huron to Buffalo might be regarded as disproportionate on the basis of distance alone, other considerations are involved, and in view of the terminal and ferry expenses at Port Huron, the Niagara Bridge charges and the Buffalo terminal expenses, all of which are borne by the Grand Trunk Railway of Canada alone upon business originating at Port Huron, the complaint against the eight-cent rate on grain is not sustained; but no good reason having been shown for a higher rate on grain products, that portion of the complaint is sustained, and the products ordered to be carried at the same rate as grain.

Stevens & Merriam, for petitioners.

E. W. Meddaugh, for defendants.

REPORT AND OPINION OF THE COMMISSION.

SCHOONMAKER, *Commissioner*:

The complaint is, in substance, for unjust and unreasonable rates over the Grand Trunk Railway of Canada from Port Huron, Michigan, to Buffalo, New York, because disproportionate to the through rate from Chicago to Buffalo over the line formed by the Chicago & Grand Trunk Railway and the Grand Trunk Railway of Canada.

The petition sets forth that the complainants are millers, and dealers in grain, at Port Huron, Michigan, having mills, warehouses and elevators at that place, used in the conduct of their business; that for a number of years they have carried on the business of manufacturing flour and feed, and purchasing grain and shipping the same by rail to Buffalo, New York, over the Chicago & Grand Trunk Railway and the Grand Trunk Railway of Canada, which roads constitute the only outlet by rail between those points; and that when a reasonable rate for carriage has been charged, to wit: from 6 to 7 cents per hundred pounds, which were the rates charged before the Act to regulate commerce took effect, they have been able to carry on their business at a profit to themselves in competition with dealers in Chicago and other western points; that the joint rate on flour, feed and grain, made by the Chicago & Grand Trunk Railway and the Grand Trunk Railway of Canada, from Chicago to Buffalo, *via* Port Huron, is 15 cents per hundred pounds, each being in the sixth class of their published tariff classification; that the rate on said traffic from Chicago to Port Huron, a distance of 335 miles, is 9 cents per hundred pounds, and from Port Huron to Buffalo, a distance of 196 miles, it is on grain 8 cents per hundred pounds, and on the other articles named, of the same class, 10 cents per hundred pounds, the rate on grain having been, shortly prior to the filing of the petition, reduced from 10 cents to 8 cents per hundred pounds.

The petitioners therefore complain that the said rates charged by the said railway companies from Port Huron to Buffalo are unreasonable and unjust rates, entirely out of proportion to the through rate from Chicago to Buffalo, or

from Chicago to Port Huron, and unwarranted by the mileage of said roads, the character of traffic, or service rendered, and that said roads have no right, under the law, to make different rates on property covered by the same tariff classification; by reason of which the complainants are subjected to undue and unreasonable prejudice and disadvantage, and to that extent are unable to conduct their business at a reasonable profit.

Complainants therefore ask that the said railway companies be required to make a reasonable rate for carriage of said property between Port Huron and Buffalo, and that such rate shall apply to all property coming under the sixth class of their published tariff.

The answer of the defendant companies sets forth that the two roads are separate and independent of each other, and that each makes the rates on traffic over its own road independently of the other, and that through rates between Chicago and Buffalo over the routes of the respondents' roads, *via* Port Huron, are divided between them as they from time to time agree.

It is further set forth that for many years it has been the practice of the competing railway companies, in prescribing traffic rates between the city of Chicago and the city of Buffalo on the three different routes, to wit: *via* the cities of Toledo, Detroit and Port Huron, to make them uniform as between the three routes, and also to make the rates between Chicago and the cities of Detroit, Port Huron and Toledo, and the rates between the said three cities last named and the city of Buffalo, the same by each of said routes; and this notwithstanding the difference in mileage between the several places by the different routes; and that it is believed that in no other way, in the absence of statutory regulation in the matter, can a war of rates between said places by said different routes be avoided.

That the rates on flour and feed have been and are the same between Chicago and the cities of Port Huron, Detroit and Toledo, but that from said last-named cities to Buffalo the rate has been 10 cents per hundred pounds.

The answer further sets forth that prior to the taking effect of the Act to regulate commerce, the rate from Port Huron to Buffalo, over the Grand Trunk Railway of Canada, was at times as low as 7 and sometimes 6 cents per hundred pounds, but that these rates were enforced by water and other competition, and at the same time that they existed the Grand Trunk Railway Company of Canada was charging and receiving from 8 to 10 cents per hundred pounds on similar traffic from places on its line in Canada easterly of Port Huron to said city of Buffalo; but that the right to charge said higher rate for the shorter haul being against the letter and the spirit of the Act to regulate commerce, the Grand Trunk Railway Company of Canada considered itself justified, when said Act became operative, in advancing the rate between said cities of Port Huron and Buffalo to the existing rate.

Respondents deny that the existing rate complained of is excessive, unjust or unreasonable, or that complainants have any reasonable or just cause of complaint on account thereof.

The following facts appear in evidence :

The distance from Chicago to Port Huron, over the Chicago & Grand Trunk Railway, is 335 miles, and from Port Huron to Buffalo, *via* Suspension Bridge, over the Grand Trunk Railway of Canada, 196 miles—total distance Chicago to Buffalo by this line, 531 miles; the distance from Chicago to Detroit, over the Michigan Central Railroad, is 285 miles, and from Detroit to Buffalo, over its Canadian connections, 251 miles—total, 536 miles; the distance from Chicago to Toledo, over the Lake Shore & Michigan Southern Railway, is 244 miles, and from Toledo to Buffalo, over the same line, 296 miles—total, 540 miles.

By the tariffs in effect when the petition was filed the rate on grain from Chicago to the cities of Port Huron, Detroit and Toledo, respectively, over the different lines reaching those cities, was 9 cents per hundred pounds, and the rate per ton-mile to Port Huron was 54-100, to Detroit 63-100, to Toledo 74-100. The rates, respectively, from Port Huron, Detroit and Toledo to Buffalo were 8 cents per hundred

pounds, and per ton-mile from Port Huron 82-100, from Detroit 64-100, from Toledo 54-100. The through rate by the several lines from Chicago to Buffalo was 15 cents per hundred pounds, and 56-100 per ton-mile.

The three lines named have long been, and still are, active competitors for the through business from Chicago to Buffalo. There are also two other competing lines between Chicago and Buffalo, the New York, Chicago & St. Louis Railroad, or Nickel Plate Line, and the Wabash Line in connection with the Great Western Division of the Grand Trunk Railway of Canada.

The Central Traffic Association, located at Chicago, and embracing a great number of railroad lines, has for several years authorized the tariffs on all east-bound traffic in the territory of that association, and the lines within the territory, and participating in the business, feel under an obligation to accept these tariffs, lest their east-bound connections should refuse to take their business. The Central Traffic Association territory embraces the whole region north of the Ohio river and west of what is called the western termini of the Trunk Lines, viz.: Buffalo, Parkersburg, Salamanca, Cleveland and Toronto. On business from this territory the Chicago basis of rates governs, and, under the system applied by that association, Toledo, Detroit and Port Huron all take the same rates. For west-bound traffic entering the territory of the Central Traffic Association the rates are established by the Trunk Lines, and are also based upon Chicago.

The through rate from Chicago to Buffalo, by the line of the defendant roads, is divided substantially upon a mileage basis, the Chicago & Grand Trunk receiving 63 per cent. and the Grand Trunk of Canada 37 per cent. On the basis of a 15-cent through rate this gives the Chicago & Grand Trunk 9.45 cents, and the Grand Trunk of Canada 5.55 cents.

There is a terminal charge at Chicago on business originating there of one dollar per car, which is borne by the Chicago & Grand Trunk road alone. There is also a terminal charge at Buffalo for delivery of the freight there, which is participated in by the Chicago & Grand Trunk. The latter

road also participates in the terminal and ferry charges at Port Huron upon through business.

The Chicago & Grand Trunk Railway terminates in the city of Port Huron at the station known as the Chicago Junction. The Grand Trunk Railway of Canada owns the tracks from that junction to a station known as Fort Gratiot, about a mile and a third from the junction, and located in the northern part of the city. The Grand Trunk Railway of Canada also owns and operates the ferry across the St. Clair river; and the terminal facilities of the company in the city of Port Huron are valuable and convenient.

Upon all freight originating at Port Huron and passing over the Grand Trunk Railway to Buffalo that company pays the Chicago & Grand Trunk \$1.50 switching charge at Port Huron, and bears alone the expense of the ferry and of transportation over the Niagara River bridge and of delivery at Buffalo. At times the expense of delivery at Buffalo has been charged to the consignors or the consignees of the freight, but the rule is now understood to be that these expenses are borne by the transportation company.

For a short period since the petition in this case was filed the through rate from Chicago to Buffalo has been 12½ cents, and when that took effect the charge on grain was reduced, Port Huron to Buffalo, from 10 cents to 8 cents per hundred pounds. The through rate, for a short period, has also been as high as 17½ cents per hundred pounds, but the prevailing rate has been 15 cents per hundred pounds, and that is understood to be the rate in effect at the present time.

The Grand Trunk Railway of Canada has also a line from Detroit to Port Huron upon which the same rates are charged to Buffalo as from Detroit over the Michigan Central line and from Port Huron to Buffalo.

As a rule the through rate on freight traffic from Chicago to the seaboard has prevailed at all points on the line of the Chicago & Grand Trunk as far east as Battle Creek, Michigan; east of Battle Creek to Lansing it was 95 per cent. of the Chicago rate; east of Lansing to the Chicago & Grand Trunk Junction it was 92 per cent. of that rate. At Port Huron proper it was 78 per cent., the same as at Detroit and

Toledo. When the $12\frac{1}{2}$ cent rate from Chicago to Buffalo was in effect, it applied as far east as the Chicago & Grand Trunk Junction. The local rate of 8 cents from Port Huron to Buffalo is $53\frac{1}{8}$ per cent. of the through rate from Chicago to Buffalo. The Port Huron rate is charged at some more eastern stations on the Grand Trunk Railway in Canada. The foregoing facts are sufficient for the purposes of the case.

The petition claims substantially proportional rates for an intermediate station on a through line between Chicago and Buffalo. It is claimed that the rates on the products in question from Port Huron to Buffalo are unjust and unreasonable as compared with the through rate from Chicago because they are not more nearly upon a mileage basis.

This question of proportional rates is not now for the first time presented. It has been before the Commission at different times and in different cases, and certain general principles have been laid down and discussed that do not seem to demand discussion again upon the facts of this case.

It has been said, and it is obvious on the facts shown, that the through rates eastward from Chicago are not wholly subject to the volition of the carrier. Those rates are fixed under the pressure of competition, both by rail and by water, and are doubtless lower than any one of the lines would be willing to accept if the business could be carried on independently of such competition. The responsibility for the through rate is, therefore, to a very slight extent due to these defendants, but is the result of agencies and forces which they are powerless to control.

For these reasons, as has often been said by the Commission, the through rate, and the divisions of such through rate between the carriers in the line of transportation, furnish no fair or just criterion for the intermediate local rates on the same line of transportation. It by no means follows that rates from intermediate points to the same destination are unreasonable or unjust because they may not be made upon a mileage basis as the divisions of joint rates are usually made. There are other considerations besides mere mileage that may legitimately be taken into account. The general

principle is that all rates must be reasonable, but, as was said in the case of the Chicago, St. Paul & Kansas City Railway Company (2 I. C. C. Rep. 265), "It is not the theory of the Act to regulate commerce that the reasonableness of rates can be separately and independently determined. On the contrary, it is assumed in the Act that persons, corporations and localities are interested, not only in the rates charged to them, but in the rates which are charged to others also, and while the Act does not require all rates to be proportional, it nevertheless makes the element of proportion an important one when the rates for any locality are to be determined. No rates can, therefore, be reasonable in and of themselves, within the contemplation of the Act, which are made regardless of proportion." The importance of recognizing this principle, and of giving it practical application by only a reasonable difference between the sums of locals and through rates have been perceived by some of the railway associations in a spirit of prudent conformity to public sentiment and to the tendency of rulings by commissions and courts, and as appears by their published action, steps have been taken in that direction.

In the present case it can not be claimed that the local rates from Chicago to Port Huron and from Port Huron to Buffalo are at all proportional upon the basis of mileage. The mileage from Port Huron to Buffalo is a little over one-half of the distance from Chicago to Port Huron, and the rates on grain are nearly equal, being only one cent lower from Port Huron to Buffalo than from Chicago to Port Huron, while on grain products from Port Huron they are one cent higher. If there were no other considerations than mileage these proportions would apparently be inequitable, and could not be sustained; but mileage, though a factor, is by no means the only consideration in making these rates.

The cost of railway transportation is made up of the expense of the two terminals, and the intermediate haul and the terminal expenses are the same whether the haul be long or short. A few miles, or even a considerable number of miles, of additional haul may in some instances of long distance transportation be practically of very little importance,

and the ratio of tonnage cost per mile diminishes with distance.

While the rate made from Chicago to Buffalo of fifteen cents per hundred pounds may be regarded as a low rate, the local charge from Chicago to Port Huron of nine cents per hundred pounds is also a low rate, but is probably all that can be charged in view of the existing competition, and of the general circumstances and conditions of the transportation. Under these tariffs Port Huron has the same rate from Chicago as Detroit and Toledo, although the distance to Port Huron is considerably greater than to the other points.

On grain shipments from Chicago to these cities Port Huron suffers no prejudice on account of its greater distance, but has all the advantages of the same rate for the traffic with fifty miles longer haul than Detroit and ninety-one miles more than Toledo. The proportion of the through rate from Chicago to Buffalo received by the Grand Trunk Railway of Canada of about five and a half cents per hundred pounds leaves a margin of two and a half cents per hundred pounds between its proportion of the through rate and its local rate of eight cents per hundred pounds on grain from Port Huron to Buffalo, and four and a half cents margin between it and the ten-cent rate on grain products.

This standing alone, it might be assumed, could scarcely be justified, but the other facts in evidence are confidently claimed by the respondents to justify the local rate. These are, in the first place, the terminal charge of \$1.50 per car for car-loads, and of three cents per hundred pounds for less than car-loads, paid by the Grand Trunk Railway Company of Canada to the Chicago & Grand Trunk Railway Company for switching charges upon all business originating at Port Huron and going eastward. The evidence on this point is not very satisfactory, but leaves the matter of this alleged terminal charge in a rather vague and uncertain state. The tracks on which the terminal service is rendered belong to the Grand Trunk Railway of Canada, the engines used for the service appear to be quite as often those of the Grand Trunk Railway as of the Chicago & Grand Trunk; and the

business reason for the allowance of this charge was not made distinctly to appear. But the other facts are entirely free from doubt. The Grand Trunk Railway of Canada has its valuable and expensive terminals at Port Huron to maintain, and its clerical force and other employees for the conduct of its business; it has the expense of the ferry across the St. Clair river, and the bridge expense across the Niagara river, and the terminal charges for delivery at Buffalo. These are all borne exclusively by the Grand Trunk Railway of Canada upon the business originating upon its line at Port Huron and eastward. The evidence does not show with any precision what these several expenses are, either in the aggregate or what would be a fair distribution of them per car-load or per hundred pounds of freight. The defendants assume in their brief that the burden of showing these expenses was upon the petitioner; but this assumption is altogether erroneous. It would impose on persons conceiving themselves aggrieved by carriers a difficult and onerous rule of evidence. It would be impossible for the petitioners to show such facts otherwise than by the defendants' agents, and it was clearly the province of the defendant to make them appear. No presumption arises that a rate is reasonable from the mere fact that it has been put in effect; and when it is *prima facie* disproportionate or relatively unequal, the onus is on the carrier to justify its charges when challenged on those grounds. The knowledge of the justifying circumstances and conditions relied on is peculiarly in possession of the carrier. In the absence of evidence of this character the Commission can not determine with any degree of exactness how much additional charge the Grand Trunk Railway is reasonably entitled to make for these expenses. It is obvious, however, and entirely equitable, that some allowance is proper and necessary for this purpose, and it is not manifest that the rate in effect is excessive. But, though there may be some doubt on the evidence as to the extent of a just allowance for these additional expenses, it seems reasonably clear to the Commission that a charge of ten cents per hundred pounds from Port Huron to Buffalo on grain or grain products, while a fifteen-cent through rate is in effect

from Chicago to Buffalo, is not supported by the evidence, and is apparently disproportionate and unreasonable.

The petitioners claim that the local charge from Port Huron to Buffalo should not exceed six and a half or seven cents per hundred pounds, and refer to tariffs that were in effect prior to the date of the Act to regulate commerce, in support of their contention. Rates made prior to that date, however, which were supposed not to be governed by legal constraints, and were often unduly preferential at particular points, are not a fair test for rates that must be maintained under the Act, with its restrictions against the greater charge for the shorter haul and against all unjust discriminations and undue preference and advantage to persons and localities.

When those rates were in effect a greater charge was made from Canadian points east of Port Huron to Buffalo than from Port Huron.

The respondent concedes that this is against the letter and the spirit of the Act to regulate commerce, and claims that it was justified in making some advance at Port Huron to bring rates on its line generally in conformity to the Act.

Advances induced by this consideration and made only to a just extent, at points where disproportionately low rates had existed, rest on a reasonable basis. So far as this rule was observed by the respondent it furnished no just ground for complaint.

Upon the case as presented the Commission is not satisfied that an eight-cent rate on grain and grain products from Port Huron to Buffalo is unreasonable, nor is it satisfied that a higher rate than eight cents on grain and grain products is reasonable and just.

Grain and grain products are in the same class, and the rates on both are equal from Chicago to Port Huron. At Port Huron a distinction has been made in the rates, grain being two cents a hundred pounds lower than grain products. The only reason assigned for this difference is that there exists water competition in the carriage of grain from Port Huron and not to any great extent in the carriage of grain products. If the water competition were in fact controlling in respect to the rate it might justify the difference. But that

was not made to appear and similar competition by water exists from Chicago. Why it should be more effective from Port Huron than from Chicago was not shown.

The petitioners insist and ask a ruling by the Commission that it is unlawful to charge different rates on property in the same class. *Prima facie*, property classified alike would seem to be entitled to the same rate, but the point is one that need not now be determined. Upon the showing in the case the articles in question are embraced in the same class, and are carried at equal rates from Chicago, and no adequate reason having been shown for a difference at Port Huron it would seem that equal rates should prevail from the latter place.

It is not deemed necessary in this case to discuss the relation of the Port Huron rates to the Detroit and Toledo rates. That has been done in another case (*Detroit Board of Trade v. Grand Trunk Railway*, 2 I. C. C. R. 315), and the same principle has been considered in other cases. The reasons for not disturbing a rate not essentially unjust, that affects several lines of road and many interests in a large territory, that has been established to put competing localities on a substantial equality and to prevent rate wars, have been fully set forth in other cases and need not be repeated. If the Port Huron local rate were clearly unreasonable, and resulted in injustice to the business interests of that city, those considerations would be inoperative to prevent such action respecting them as might appear to be appropriate. But that is not the case. The evidence does not show that any material injury results to the business interests of Port Huron from an eight-cent rate to Buffalo. In fact, it appears affirmatively that the competition from Chicago with grain products from Port Huron is very slight and unimportant.

The decision of the Commission is that an eight-cent rate per hundred pounds upon grain and grain products from Port Huron to Buffalo, while a fifteen-cent through rate from Chicago to Buffalo is in effect, is not unreasonable, and that a rate from Port Huron to Buffalo in excess of eight cents per hundred pounds while such through rate from Chicago is maintained, is unreasonable.

THE OREGON SHORT LINE RAILWAY CO. v. THE
NORTHERN PACIFIC RAILROAD CO.

Filed November 12, 1889.

Under the rules of practice issued by this Commission a replication to an answer is not required or allowed.

MEMORANDUM.

BY THE COMMISSION:

In this case after the answer to the complaint was filed, the complainant asked leave to file a replication. The Rules of Practice in this Commission not only do not provide for a replication to the answer, but in effect, though not in terms, exclude it. Rule IV provides for an answer, unless the respondent sets the case for hearing on the complaint under Rule V, which provides as follows: "If a carrier complained against shall deem the complaint insufficient to show a breach of legal duty, it may, instead of filing an answer, serve on the complainant notice for a hearing of the case on complaint." But when an answer is filed the Rules contemplate that the issue is thereby *joined*. The language of Rule XI is this: "Upon issue being joined by the service of answer, the Commission will assign a time and place for hearing the same." And, again, in XII: "When a cause is at issue on petition and answer, each party may proceed at once to take depositions," &c. The omission to provide for a replication to the answer was not an oversight when the Rules of Practice were drafted and adopted. The view of the Commission then was to simplify the practice as much as practicable. Experience since has not developed any necessity for change in the respect under consideration. Both the letter and the spirit of the statute excludes the idea of technicality in its administration. The complaint and answer are sufficient to indicate the substantial controversy. Evidence is admitted with liberality to

develop all facts that bear on the issue thus made. Under the practice pursued in the hearing of causes the complainant would gain nothing by filing a replication, and would lose nothing by not filing it. The complainant has leave to withdraw his motion to file a replication.

WILLIAM L. RAWSON, PETITIONER, v. THE NEWPORT
NEWS & MISSISSIPPI VALLEY COMPANY; THE
BALTIMORE AND OHIO RAILROAD COMPANY,
AND L. BOYER'S SONS, DEFENDANTS.

Argued and Submitted June 20, 1889.—Decided November 13th, 1889.

1. Where a tariff complained of was abandoned by the carriers for a long period of time before the complaint was made and shortly after the tariff was put in force, the Commission will not make an order requiring the carriers to cease and desist from enforcing such tariff, because such an order would be vain and useless.
2. The amendment of March 2, 1889, expressly provides that it shall have no application to pending proceedings, and as this proceeding was pending at the time, no reparation can be awarded, and the remedy of the petitioner is in the courts.

Garland & May, for petitioner.

W. D. Guthrie, for Newport News & Mississippi Valley Company.

H. L. Bond, Jr., for Baltimore & Ohio R. R. Company and L. Boyer's Sons.

REPORT AND OPINION OF THE INTERSTATE COMMERCE COMMISSION.

BRAGG, *Commissioner*:

After the original complaint had been filed in this proceeding and answered by the defendant, the Newport News & Mississippi Valley Company, the petitioner by leave of the Commission was permitted to file an amendment complaint, in substance the same as the original, except that additional new parties were made.

The complaint alleges violations of the 3d and 6th sections of the Act to regulate commerce, and charges, in substance, the following facts:

For some years previous to and during the spring and early summer of 1887 there existed a tariff on the Chesapeake &

Ohio Railway for the transportation of lumber from various points on its lines to New York City, which included delivery without any charge for lighterage to any point within the known lighterage limits of New York harbor. The rate prevailing at the time last mentioned was 24 cents per hundred pounds and the routeing was *via* the Richmond, Fredericksburg & Potomac Railroad from its junction with the Chesapeake & Ohio Railway, and during this period, and by this route, and at this rate petitioner shipped a number of cars of lumber to New York City.

On or about the 10th day of August, 1887, the agent of the petitioner at Covington, Va., Mr. Braxton, loaded with lumber car No. 14,532 of the Newport News & Mississippi Valley Company, which lumber had been sold to Mr. J. P. Stockdale, of No. 78 Wall Street, New York City. Mr. Braxton made out, as he had been doing theretofore, a bill of lading and duplicate for billing and routeing the car, and handed the same to the agent of the Newport News & Mississippi Valley Company at Covington to have weights inserted and to sign and return. The car was taken out of the yard and away as usual. Some two or three days after it had gone, the agent of the Newport News & Mississippi Valley Company handed to Mr. Braxton, not the bill of lading as originally made out and given to him by Mr. Braxton, but another and substituted bill of lading, routeing the car *via* Staunton and the Baltimore & Ohio Railroad Company, which incurred an additional charge of not less than five cents per hundred pounds to be exacted for the delivery by lighter from Comunipaw to destination within lighterage limits.

The substituted bills of lading were received by the petitioner on August 13th, 1887, and were enclosed on the 15th day of that month in a letter of the petitioner to General William E. Wickham, then Second Vice-President of the Newport News & Mississippi Valley Company at Richmond, Va., wherein it was stated that the petitioner had not received notice of the change of routeing and increase of rate thereby to New York City by the additional charge of five cents or more for lighterage. Nor were these rates published for the information of the public at the offices of the Newport News

& Mississippi Valley Company in Richmond, and Covington, nor at several other stations where these rates should have been displayed for public information, which were examined by the petitioner.

That upon investigation the petitioner ascertained and was shown a circular printed on light tinted paper, issued in June or July of the year 1887, from the office of the General Freight Agent in Richmond, Va., of instructions to agents at stations of the company, which was intended for their information, and theirs solely, and which circular it is beyond the power of the petitioner to exhibit. This circular was not posted at any office examined by the petitioner, for public information. By this circular agents were instructed as to the change of routeing and to bill freight to Communipaw at 24 cents per hundred pounds, lumber in lots of one car, but to bill to New York City, lighterage free, lumber in lots of five cars at 24 cents per hundred pounds. These instructions, petitioner claims, were in violation of both sections 3 and 6 of the Act to regulate commerce, inasmuch as a discrimination was made in favor of a shipper of five cars at a lower rate than a shipper of one car of the same commodity. It is also claimed to be a violation of the 6th section, inasmuch as without any notice whatever to the public a change of routeing and increase of rates of five cents per hundred pounds to a total of 29 cents were made for delivery at the same destination as compared with the previous rate of 24 cents. During the month of September following and subsequently petitioner made various efforts to have this matter adjusted with the chief officers of the lines carrying the freight, but without success. General Wickham, who was receiver of the Newport News & Mississippi Valley Company, died shortly after, September, 1887.

The prayer of the petition is that the defendants shall be required to cease and desist from the violations of law complained of and to make reparation for the injury done to petitioner.

The Newport News & Mississippi Valley Company answered the complaint, in which it states that it is a corporation cre-

ated and organized and existing under and by virtue of the laws of the State of Connecticut, authorized to lease and operate railroads, and that at and prior to the taking effect of the Interstate Commerce Act, so called, as well as subsequently thereto until the 27th day of October, 1887, was the lessee of and operated the Chesapeake & Ohio Railway in the States of Virginia and West Virginia.

It is not now operating said railway and has not operated the same at any time since the 27th day of October, 1887, when the receiver of said railway was appointed by the courts of Virginia and West Virginia; at the termination of said receivership said railway was re-delivered to the Chesapeake & Ohio Railway Company, which has since been operating the same.

It respectfully submits that the Interstate Commerce Commission has no jurisdiction of the claim made in this petition.

It respectfully submits that in and so far as the said Rawson by his complaint claims the amount of, or compensation for, or re-payment of the value of the lumber referred to in said petition, the said Interstate Commerce Commission is without jurisdiction as to that complaint.

It admits that previous to the taking effect of the Interstate Commerce Act and for a short time thereafter, as it believes, there existed an arrangement between the Chesapeake & Ohio Railway Company and the Pennsylvania Railroad Company by which lumber could be shipped from Covington, Va., to the city of New York at a rate of 24 cents per hundred pounds, the routeing being by the Richmond, Fredericksburg & Potomac Railroad from its junction with the Chesapeake & Ohio Railway, which included delivery, lighterage free, to any point within the lighterage limits of New York Harbor, and it admits upon information and belief that the said Rawson had shipped a number of cars of lumber to New York City according to such routeing and rate; but it avers that the major part of the transportation involved in such carriage of merchandise was not upon the lines or in any wise controlled by the Chesapeake & Ohio Railway or the Newport News & Mississippi Valley Company, but upon

the lines owned and controlled by or in the interest of the Pennsylvania Railroad Company; practically, in respect to the carriage of merchandise by rail from Covington, Va., and similar points to the city of New York, the Chesapeake & Ohio Railway Company is, and the Newport News & Mississippi Valley Company operating the Chesapeake & Ohio Railway was dependent either upon the Pennsylvania Railroad Company or the Baltimore & Ohio Railroad Company or the lines controlled by them respectively.

The rate above referred to was made by authority of the Pennsylvania Railroad Company and the free lighterage offered thereby was a privilege granted by the Pennsylvania Railroad Company, and with respect to the granting or the withholding of which the Chesapeake & Ohio Railway Company and the Newport News & Mississippi Valley Company had no control whatsoever. Shortly after the Interstate Commerce Act went into effect the Pennsylvania Railroad Company declined further to continue the transportation above referred to at the rates and in the manner above prescribed, and the most favorable arrangement which the Chesapeake & Ohio Railway Company or the Newport News & Mississippi Valley Company, as lessee of the Chesapeake & Ohio Railway, could secure, was an arrangement with the Baltimore & Ohio Railroad Company and the lines controlled by it, through and by means of which arrangement the Newport News & Mississippi Valley Company secured to shippers of five cars for the same consignee and the same point of delivery, free lighterage within the lighterage limits of the harbor of New York. But the Newport News and Mississippi Valley Company was unable to secure the privilege of free lighterage for any less amount. It in no wise controlled or could control the question of whether free lighterage should be granted in any cases, or in what cases such lighterage should or should not be granted. It was wholly subject to the directions and control in that regard of the railroad companies controlling the ultimate line and the lighterage in the harbor of New York. The Newport News and Mississippi Valley Company was wholly dependent on such other companies in respect of lighterage and rates therefor, and the most

favorable terms to shippers which it secured was by the Baltimore & Ohio Railroad which involved lighterage free for five cars and a charge for lighterage of a smaller amount.

In accordance with the arrangement so made in regard to shipments by its lines to New York, the Newport News & Mississippi Valley Company, under date of July 2d, 1887, and on or about that day issued to its agents along its lines instructions as to manifesting and routeing property to eastern points by which it was prescribed that property forwarded by all rail to New York should be forwarded *via* Staunton, Va., and the Baltimore and Ohio lines, and by which it was expressly prescribed that freight so forwarded, except live stock, would be subject to the following lighterage regulations:

“If in lots of five car-loads for the same consignee and the same point of delivery, it will be lightered free to any point within the lighterage limits of New York harbor; if not in compliance with the above, extra lighterage charges will be made and collected. Agents must not sign bills of lading granting lighterage free except in accordance with the above, and in that case must note on each way-bill that it covers the part of the lot of five cars giving on each the initials and numbers of the other four.”

And by such circular the lighterage limits in New York harbor are expressly prescribed. Such arrangements were made for routeing property to New York and such instructions issued to the agents of this company at points along the line of the Chesapeake & Ohio Railway because the same were the best arrangements in the interest of the shippers that this company could effect for such routeing and carriage of merchandise.

It denies that it ever undertook, or agreed, or became in any wise bound or liable to carry the merchandise referred to in the petition herein, either by the Pennsylvania route or at the rate of 24 cents per hundred pounds, or that it ever undertook, or agreed, or became bound to afford to the shipper free lighterage in the harbor of New York, or ever under-

took to control or direct in respect to the lighterage thereof except in accordance with the circular of July 2d, 1887, above mentioned.

It is unable to admit or to deny the particular statements in the complaint with respect to the circumstances connected with the shipment of and issue of bills of lading for the lumber referred to in the complaint; but denies absolutely as to itself and upon information and belief as to its agents and servants, that any bill of lading for the carriage of such merchandise by the Pennsylvania line or involving free lighterage delivery thereof or any lower rate than 24 cents per hundred pounds and lighterage in addition was ever accepted, or approved, or assented to by or on its behalf. Instructions were issued to its several agents on or about July 4, 1887, as above stated, expressly describing the mode and manner in which, and the terms upon which such transportation could be conducted; and it avers upon the best of its knowledge, information and belief that such instructions were followed and obeyed, and that no one on its behalf ever undertook, in respect of the merchandise complained of, transportation in any other way or upon any other terms than are embodied in such instructions.

It avers upon the best of its knowledge, information and belief that its agent then conducting its transportation business fully informed the petitioner as well as his agent at Covington, Va., as to the mode and manner and the terms upon which such transportation had to be conducted.

It denies upon information and belief that the Baltimore & Ohio Railroad Company ever received payment for performance of any instructions of Stockdale or any one else as to the delivery of said lumber from Communipaw, but, on the contrary, it avers that the compensation paid the said Baltimore & Ohio Railroad Company in respect thereto only covered the charge for carriage thereof to Communipaw.

Upon information and belief it denies that General Wickham ever stated to the petitioner that in his opinion, or in the opinion of Mr. Henry T. Wickham the action of the company was any violation of the Interstate Commerce Law. It is unable to state whether General Wickham ever received

any such letter as Exhibit E to the complaint, as no such letter has been found or returned in connection with this matter.

It is unable to answer with greater particularity in respect to the particular facts connected with this shipment as the organization of the defendants, so far as the Chesapeake & Ohio Railway is concerned, is entirely broken up, its agents who were concerned in conducting its business on said railway being in other employments and no longer in the employment of this defendant, and General Wickham being dead.

It denies that it was ever under any obligation to post or to conspicuously display the terms and arrangements which it was from time to time able to make with other lines for the transportation of merchandise to the city of New York. Nevertheless, it avers that it took every pains to communicate the facts in relation thereto to persons engaged in such shipments, and never in any wise concealed or declined to disclose the same and the same was entirely open to all interested therein and to the public.

It denies that its instructions above referred to were in violation of the 3d and 6th sections or any section of the Interstate Commerce Act, or that in respect to any of the matters referred to in said petition it has in any wise violated or disregarded the provisions or requirements of said Act. And it prays that the petition may be dismissed.

The answer of the Baltimore & Ohio Railroad Company states that it has no knowledge of the matters and facts set out in the petition except that it received the car-load of lumber mentioned in the petition at Staunton, Va., from the tracks of the Chesapeake & Ohio Railway, that the same was transported over its lines and those of its connections to Communipaw, N. J., where the lumber was delivered to L. Boyer's Sons, a firm engaged in the lighterage business and then acting as agents of the defendant, to be transported by lighter to the point of delivery to the consignee; that previous to the receipt of this shipment at Staunton, as aforesaid, to wit, on the 22d day of March, 1887, this respondent had

notified the Chesapeake and Ohio Railway company and all companies operating over its railway that on and after April 4, 1887, a lighterage charge of five cents per hundred pounds, to be paid by the consignees, would be charged on lumber and forest products for delivery within the lighterage limits of New York harbor over and above the rate for the rail transportation to Communipaw, which notification was given by a circular letter, a copy of which is hereto attached, marked Respondent's Exhibit B. & O. No. 1; that the Chesapeake and Ohio Company or any other company operating its lines had no authority from this respondent to deliver lumber or forest products to this company for transportation to Communipaw and delivery at New York on any other terms than those set forth, and this respondent agreed to accept freight from said lines only on these terms; that this respondent had no contract with the petitioner and no contract for the transportation of the lumber mentioned other than that made with the company then operating the Chesapeake & Ohio Railway under the circular notice above mentioned.

The respondent says that the charge of five cents per hundred pounds for delivery by lighters in the harbor of New York over and above the rail tariff rate for transportation to Communipaw only, is just and reasonable and was made in order to meet actual lighterage expenses.

The answer of L. Boyer's Sons, a firm composed of Charles H. Boyer and Frank W. Boyer, states that they are engaged in lighterage and transportation by steam lighters and barges; that in the year 1887 they were acting under a contract with the Baltimore & Ohio Railroad Company as the agents of that company in delivering by lighters in the harbor of New York such freight as that company delivered to them for that purpose; that on or about August 24, 1887, they received on one of their lighters a car-load of lumber consigned to J. P. Stockdale, which they believed to be the car-load of lumber referred to in the petition; that on August 25th they sought to deliver that lumber to said Stockdale, first calling for the lighterage charges thereon, but said Stockdale refused to receive the same and continued so to refuse up to September

1st, when these respondents stored the said lumber at Tebo's dock and notified said Stockdale.

The respondents know nothing more about the matter alleged in the petition.

We find the material facts in this proceeding to be that for about twelve years petitioner has been a dealer in and shipper of lumber from points in the State of Virginia, and for part of that time over the line of the Chesapeake & Ohio Railway, of which the Newport News & Mississippi Valley Company was the lessee, and of its connecting lines to points in other States. For a considerable period prior to April 5, 1887, these shipments to northeastern points, such as New York, had been over the line of the Newport News & Mississippi Valley Company *via* the Richmond, Fredericksburg & Potomac Railroad and the Pennsylvania Railroad, this being his only route for such shipments, and by this route the rate was 24 cents per hundred pounds from Covington, Va., to New York City, which included lighterage free to all points within the lighterage limits of the harbor of New York.

Shortly before April 5, 1887, the Pennsylvania Railroad Company gave notice to the Newport News & Mississippi Valley Company, lessee of the Chesapeake & Ohio Railway, that it could no longer make this arrangement and give this rate with lighterage free on these shipments by this route after April 5, 1887, and proposed another route for these shipments but which was so circuitous that the Newport News & Mississippi Valley Company found it impossible or undesirable to do the business by this last-named route. Some time after that the Newport News & Mississippi Valley Company entered into an arrangement with the Baltimore & Ohio Railroad Company to make these shipments to New York *via* Staunton at a rate of 24 cents per hundred pounds, but under this arrangement there was to be a lighterage charge of five cents per hundred pounds on all less than lots of five cars to the same consignee and at the same point of delivery. This was the arrangement proposed by the Baltimore & Ohio Railroad Company and accepted by the Newport News & Mississippi Valley Company.

On the 2d day of July, 1887, a circular of instructions bearing that date, setting forth all the rates under this arrangement, was issued by the Baltimore & Ohio Railroad Company, and the Newport News & Mississippi Valley Company and placed in the hands of their agents for billing and routeing such shipments. This was a joint rate and the law at that time did not require publicity to be given to such a rate except to the extent and in the manner that should be ordered by the Interstate Commerce Commission.

On the 21st day of June, in the year 1887, the Interstate Commerce Commission published an order to all carriers of interstate traffic under the statute, the Baltimore & Ohio Railroad Company and the Newport News & Mississippi Valley Company being among the number, to give publicity to all their joint rates on interstate traffic in the following manner:

“Joint tariffs of rates, fares, or charges, established by two or more common carriers for the transportation of passengers or freight passing over continuous lines or routes, copies of which are required by the sixth section of the ‘Act to Regulate Commerce’ to be filed with the Commission, shall be made public so far as the same relate to business between points which are connected by the line of any single common carrier required by the first paragraph of said section to make public schedules of its rates, fares, and charges. Such joint tariffs shall be so published by plainly printing the same in large type of at least the size of ordinary ‘pica,’ copies of which shall be kept for the use of the public in such places and in such form that they can be conveniently inspected, at every depot or station upon the line of the carriers uniting in such joint tariff where any business is transacted in competition with the business of a carrier whose schedules are required by law to be made public as aforesaid.”

The course of making these lumber shipments by the petitioner was for him to look after the rates and routes and to give instructions to his agent, Mr. Braxton, at Covington, Va.,

and the latter attended to making the shipments. The manner in which this was done by Mr. Braxton was for him to make out the bills of lading, stating the route over which the lumber was to go, and to hand these bills of lading to the agent of the Newport News & Mississippi Valley Company at Covington for the latter to insert the weights and sign and return them to Mr. Braxton. In the early part of August, 1887, petitioner being absent from the State of Virginia on other business, left or sent instructions to Mr. Braxton to ship a car-load of lumber from Covington, Va., to J. P. Stockdale, at New York City. A day or two prior to August 10th, 1887, Braxton loaded the car with lumber to ship to Stockdale, and went to Coverston, the agent of the Newport News & Mississippi Valley Company, at Covington, and handed the latter bills of lading which specified the routeing of this car over the line of the Newport News & Mississippi Valley Company, the Richmond, Fredericksburg & Potomac Railroad and the Pennsylvania Railroad to New York, as the previous shipments had been made by the petitioner and inserted in the bills of lading "lighterage free." At that time neither the petitioner nor his agent, Mr. Braxton, had any actual notice of the change of routeing, billing, and rates that had been made by and between the Newport News & Mississippi Valley Company and the Baltimore & Ohio Railroad Company, or that the Newport News and Mississippi Valley Company had ceased to make shipments *via* the Richmond, Fredericksburg & Potomac Railroad and the Pennsylvania Railroad; and the strong preponderance of the evidence is, and upon it we find the fact to be, that at that time the petitioner nor his agent, Braxton, had any constructive notice of these changes.

On the 10th day of August, 1887, Mr. Coverston, the agent of the Newport News & Mississippi Valley Company at Covington, Va., made out new bills of lading, routeing this car-load of lumber *via* the Newport News & Mississippi Valley Company to Staunton and thence *via* the Baltimore & Ohio Railroad Company to New York City, in which there was no statement that there was lighterage free, and signed and returned these new bills of lading to Braxton on that day.

He did not return the bills of lading to Braxton, which the latter had made out and handed to him. The car of lumber at that time had gone forward to New York. Braxton then ascertained from Coverston, for the first time, of the change of routeing and billing, and rates, that had been made by the Newport News & Mississippi Valley Company from the Richmond, Fredericksburg & Potomac Railroad and the Pennsylvania Railroad, to that of the Baltimore & Ohio Railroad; and on the 11th of August, 1887, Braxton wrote to petitioner, who was then in Philadelphia, what had occurred. On the 15th day of August, 1887, by letter of that date, petitioner wrote concerning this matter to General William E. Wickam, then 2d Vice-President and General Manager of the Newport News & Mississippi Valley Company, in New York, complaining of what had occurred and protesting against it.

The car of lumber went forward to New York and it was lightered by L. Boyer's ~~lighterage~~ lighterage agents of the Baltimore & Ohio Railroad ~~Company~~, and by them tendered to Stockdale. These lighterage agents made a charge of five cents per hundred pounds for the lighterage, amounting to about \$20.00, which Stockdale refused to pay, and the petitioner would not pay, and the lighterage agents then stored the lumber for a considerable period of time and held it for lighterage charges. The evidence does not show that they sold it, but the inference is that they did for lighterage charges. The value of this car-load of lumber was from \$260.00 to \$280.00.

The bills of lading in this instance provide for the carriage of lumber from Covington to New York at a rate of 24 cents per hundred pounds. There is nothing in the bills of lading about any charge for lighterage, or that lighterage is free. According to the tariff of rates existing between the Newport News & Mississippi Valley Company and the Baltimore and Ohio Company at the time of the shipment, the lighterage charges on this car-load of lumber would have been five cents per hundred pounds. The rule of the lighterage companies in New York at that time was, if there were as many as five car-loads for one consignee and at the same point of delivery, that then the lighterage was free as to the shipper or con-

signee, but the railroad company paid the lighterage, which was sixty cents per ton, out of the transportation rate received from the shipper or consignee; if there was less than five car-loads to the same consignee and at the same point of delivery then the lighterage charge was one dollar per ton and the shipper or consignee had to pay it. This difference in the amount of the lighterage charges was based upon the additional time it required and the cost of the service in delivering by lighter five cars when all were delivered to the same consignee, and one or more cars, less than five, delivered to different consignees.

The claim of petitioner was pending before the officials of the Newport News & Mississippi Valley Company from August, 1887, until the fall of 1888, when it was finally decided against him, and shortly afterwards he filed his petition for relief before the Interstate Commerce Commission. He paid the transportation rate of twenty-four cents per hundred pounds upon the lumber from Covington, Va., to New York, as soon as he was notified that Stockdale had refused to pay it, but neither he nor Stockdale have paid any part of the lighterage charge, nor has he or Stockdale ever received the lumber or any part of the proceeds of its sale if it has been sold. The rates complained of have long since been abandoned and discontinued by the defendant.

The foregoing statement embraces a summary of the material facts as we find them in this proceeding.

In the view we are constrained to take of this case under the statute, we can express no opinion as to its merits. The tariff complained of has long since been abandoned and discontinued by the carriers. It ceased to exist in the early part of the fall of 1887; and therefore there is nothing we can do in the direction of ordering the carriers to cease and desist from enforcing it.

As to the reparation claimed, prior to the amendment of the 16th section of the Act to regulate commerce of March 2, 1889, we held in several cases, that as the statute provided for no trial by jury in the courts to enforce our awards in controversies such as were triable at Common Law and where

more than twenty dollars was involved, we could award no reparation in consequence of the provisions of the seventh amendment to the Constitution of the United States. The amendment of the statute of March 2, 1889, was made to cover this feature of the statute, but the amendment expressly provides that it shall have no reference to proceedings pending at the time the amendment was adopted; and this proceeding was pending at that time. The amendment to this effect is found in the proviso in section 22 of the statute as amended, and is in the following language: "Provided that no pending litigation shall in any way be affected by this Act." The statute, therefore, leaves the petitioner to enforce his claim for reparation in the courts as he may be advised, and accordingly this petition is dismissed without prejudice.

FREDERICK A. WHITE v. THE MICHIGAN CENTRAL
RAILROAD COMPANY AND THE LAKE SHORE
AND MICHIGAN SOUTHERN RAILWAY COM-
PANY.

Heard at Chicago September 30, 1889.—Decided December 1, 1889.

When a complaint charged that the respondent railroad companies, which were common carriers subject to the Act to regulate commerce, were accustomed to make deductions of from five to ten pounds of wheat per load from the true weight when delivered by the farmer to the buyer at the elevators of the respondents, and gave receipt to the farmer for the amount as thus diminished, upon which the latter was paid by the buyer, thereby suffering a loss to the extent of such reduction, but failed to charge that the wheat was delivered for interstate transportation, or, indeed, for transportation anywhere, it was

Held, that the complaint was insufficient in substance to show violation of the Act to regulate commerce, and that the respondents were entitled to have it dismissed on their motions to that effect, but that the dismissal should be without prejudice.

An averment that the respondents were interstate commerce carriers subject to the Act to regulate commerce was not of itself sufficient to warrant an inference under a motion to dismiss a complaint for insufficiency, that wheat delivered at an elevator of the respondents was for interstate commerce.

This case was heard solely upon the respondents' motions to dismiss the complaint for insufficiency of its allegations to show violations of the Act to regulate commerce, but the complainant having filed some depositions taken before the hearing of said motions, the Commission looked into this evidence with a view of seeing what light it shed upon the general claim of unlawful practice by the respondents, and upon the duty of the Commission to proceed against them on its own motion.

George S. Clapp, for the complainant.

Ashley Pond, for the Mich. Central R. R. Co.

George C. Greene, for the L. S. & M. S. Railway Co.

REPORT AND OPINION OF THE COMMISSION.

VEAZEY, *Commissioner* :

The complainant filed an amended complaint in which he charged that he is a farmer engaged in the business, among other things, of raising and selling wheat and grain ; that the

respondents are common carriers engaged in the transportation of passengers and property by railroad between points in the States of Indiana and Michigan and other States farther east, and as such common carriers are subject to the Act to regulate commerce; that they have elevators for the receipt and storage of wheat at their several railroad stations, the Michigan Central Railroad Company at Buchanan and Dayton, Michigan, and the Lake Shore and Michigan Southern at Plainfield and New Carlisle in the County of St. Joseph and State of Indiana, at which elevators of said companies in said places the complainant has taken and delivered to said companies different loads of wheat within the last five years; that the respondent companies have, both of them, a custom in respect to the receipt of wheat into their respective elevators, which the complainant is advised is illegal, to wit: That the companies do not deal with farmers in storing wheat for shipment, that they contract with the shippers who purchase from the farmer their wheat, that the shipper gives the farmer a ticket in the nature of an order to the railroad company to receive the wheat, that the company then receives the wheat and gives to the holder of the ticket its receipt for the weight of the wheat, and the farmer takes the ticket and receipt to the buyer and gets his pay, but that from each and every load of wheat which the Michigan Central Railroad Company receives into its elevators it retains five pounds of wheat and gives its receipt for the weight of the load less such five pounds, that the custom of the Lake Shore & Michigan Southern Railroad Company is to deduct from each load not more than ten pounds but at least five pounds on each load, that if the odd pounds are more than five it deducts not to exceed ten pounds and retains such excess, giving its receipt to the farmer for the weight, less the amount so detained; that both the respondent companies have taken these deductions from the complainant within the last five years, and that they insist on the right to so deduct from each load of the complainant and all other farmers depositing wheat in their elevators on their roads.

That in the fall of 1884 the complainant delivered to the Michigan Central Company, at its elevator in Dayton, Mich-

igan, forty loads of wheat, and that in every instance said company deducted five pounds, giving the complainant a ticket for the weight of the wheat less such five pounds; and that the value of the wheat so deducted was about the sum of three and one-third dollars.

Complainant prayed that the Commission require the respondent companies to refund and pay the complainant for the value of the wheat so retained by each company, respectively, within the last six years; also that the Commission require the respondent railroad companies to cease and desist from such practice and custom of converting wheat stored in their elevators, and that in the future they give credit to the depositor of wheat in their elevators for the actual amount of wheat received and stored by them; and further prayed for general relief under the Act to regulate commerce.

The respondent the Lake Shore & Michigan Southern Railway Company made answer denying that any of the acts complained of in the petition, or the custom therein alleged, were or are in violation of the provisions of the Act to regulate commerce, and denying the jurisdiction of the Commission upon the facts stated in the complaint; and, second, averring that the amount of wheat deducted from actual weight alleged in the petition, is barely sufficient to indemnify the railroad company against loss by shrinkage in the wheat stored and unavoidable waste in the handling of the wheat, and that the custom of making such reduction is reasonable and just for that reason, as well as for the further reason that wheat is received at said elevators and stored by the railroad company, and a certificate is given of the weight, for the benefit and advantage of the party delivering the same, without charge by the company or cost to the party, other than the said slight deduction from actual weight when received.

The original complaint was filed May 27th, 1889, and was duly served on the respondents. Said answer of the Lake Shore & Michigan Southern Company was filed July 5th, 1889. On the 14th of June, 1889, the Michigan Central Company, instead of filing answer, served notice, under Rule V of the Rules of Practice, for a hearing of the case on the

complaint. Subsequently, on July 31st, 1889, the complainant moved for leave to file an amended complaint, charging the respondents as interstate common carriers. On August 11th, 1889, the Commission ordered said application, for filing an amended complaint, to be filed, and that the same be heard and disposed of at the same time that the original complaint should be heard and determined, upon said notice of the Michigan Central Company.

The complainant proceeded to take testimony by deposition in advance of the hearing, under Rule XII of the Rules of Practice.

When the case came on for hearing, pursuant to assignment, on September 30th, 1889, no objection was made to the filing of the amended complaint, but said notice of the Michigan Central Company for hearing on the complaint was, without objection, treated as having been renewed as to the amended complaint, and at the same time the Lake Shore & Michigan Southern Company moved to dismiss the complaint for insufficiency, pursuant to the provision of Rule V when an answer has been filed. Rule V provides that, when notice is served for hearing of the case upon the complaint, the facts stated therein will be taken as admitted.

The case was heard on said motions of the respondents, they having taken no testimony. After arguments the counsel of the complainant stated that he did not wish to file further testimony, and counsel for respondents that they had no testimony to offer, until the motions to dismiss were disposed of.

The case therefore stands for decision upon the sufficiency of the complaint, taking the facts therein charged to be true.

It is entirely plain that the complaint fails to state that any wheat was delivered to either of the respondent companies by the complainant or others, at any of the railroad elevators, or was received or stored, for interstate transportation. This, in fact, is so plain there is no room for discussion as to its proper interpretation. It is urged in reply in behalf of the complainant that, when it is charged in general terms in a complaint that the respondents are engaged in the trans-

portation of passengers and property between points in different States, it is sufficient to warrant the inference that any freight which one of the carriers is charged to have received at any specified point in a State, was received to be transported into another State, and that the burden is on the company to show it was not so received; and so here, that wheat delivered at any elevator of the respondents was to be transported beyond the limits of the State wherein it was received. This is clearly not a necessary inference. The fact is just as likely to be the other way, especially in the case of railroads like the respondent roads, which run a long distance through large States. It is to be kept in mind that we are now on the point as to the sufficiency of the complaint. The question is as to what jurisdictional facts it contains.

The proceeding is analogous to a demurrer to a declaration, which is a confession of alleged facts well pleaded, but not a confession of such inferential facts as do not necessarily follow from the alleged facts. The position of the complainant is that, because possibly the grain delivered at the elevators was intended for transportation beyond the State, therefore the Commission should assume that it was so intended and received by the railroad company. We think it is not a debatable proposition.

But the failure in this complaint goes further. It does not aver that the delivery of the wheat to the elevators was for the purpose of transportation anywhere. A farmer sells to a buyer, and is to deliver at the elevator. The transaction is solely between those parties. The farmer is not the shipper. The railroad company moves the wheat for the buyer as he may at any time direct. There is no averment as to what is to be done with the wheat as between the buyer and the railroad company.

When this complaint passes the averments as to this custom of the respondents and reaches even specific averments, it fails to charge any instance of the alleged wrong since the Act to regulate commerce took effect. Indeed, it puts the delivery to the elevator by the complainant as far back as 1884, more than two years before this statute was passed, and charges no delivery since; so that, if we were warranted

in presuming the delivery was for interstate transportation, no violation within the cognizance of the Commission is charged.

We think that under the most liberal construction known to legal proceedings, the complaint is insufficient.

It need not be stated that, whatever wrongs the carrier may have perpetrated of the nature charged as to deliveries of wheat for transportation within the State only, they are not within the jurisdiction of this Commission to correct.

The complaint, even as amended, being clearly insufficient in substance to show violations of the Act to regulate commerce, the respondents are entitled, upon their motion, to have it dismissed; but even if we look beyond the complaint into the evidence, with a view to see whether that makes out a case for a corrective order against the respondents, we find the facts testified to are very inconclusive and unsatisfactory.

One witness in substance testified to his employment for the Lake Shore & Michigan Southern Railway Company at New Carlisle Station, Indiana, for seven years continuously, previous to and until June, 1889; also to the custom of making deductions in the weight of wheat delivered by farmers at the elevator at that station substantially as charged in the complaint; also as to the amount that he shipped out of the elevator there to the elevator in Toledo in 1883 and in 1888, these amounts being the excess of wheat over the amount given in receipts to the farmers. He also testified as to what he learned was the amount of such excess shipped from Terre Coupee, which was hearsay, and what he discovered was shipped from Rolling Prairie; also to the fact of shrinkage of weight of wheat in an elevator; also about the scales used and method of weighing, and imperfection in some of the scales. Although not so stated in terms by the witness, we infer and find that the wheat delivered at the elevators at stations in Indiana was shipped by the buyer to points outside the State.

Another witness, a farmer, testified to his sale and delivery of wheat at Dayton, Michigan, in 1882, and to the custom of the Michigan Central Railroad Company to deduct as high as

nine pounds and not less than five from every load weighed, and that this has existed for many years.

These witnesses testified to some other facts but not affecting the force of their testimony on material points. No other witnesses were produced. No claim was made by counsel on this testimony, and it is examined by the Commission on its own motion, only to enable it to see what the duty is in view of the information which the testimony affords. And in this view it is proper to note what the evidence fails to show as well as what it does show.

It fails to show that the complainant has suffered any wrong under the alleged custom since this Act was passed; or that he has delivered any wheat whatever, for any purpose, to the respondents, since the fall of 1884; or that the wheat then delivered was for shipment beyond the State where shipped; or that it was to be transported anywhere. The evidence shows that deductions from weight were made by the respondent companies as charged, since this Act was passed, but it is not shown under what circumstances or that it was not pursuant to arrangement or understanding between the parties. So far as shown it would seem to have been a well understood and uncomplained of custom. Not a single farmer who thus sold and delivered wheat since this enactment was produced as a witness to show the fact of a deduction or to complain of it as to him, or as to anybody else, or as a custom. The evidence does show that there is a shrinkage in the weight of wheat while in the elevator.

Taking all the material facts which the evidence of the complainant tends to show, they are as before stated, inconclusive and fall far short of establishing a case of violation of the Act to regulate commerce. But, while we think the respondent companies are entitled to have the complaint dismissed, we think it should be without prejudice, because it does not follow from the fact that no violation of the Act to regulate commerce is shown, that none could be shown under the alleged custom of making deductions from the weight of wheat. The complaint and evidence show a custom of what is claimed to have been a wrongful conversion of wheat by the railroad companies. Although such conversion would be a

wrong within the jurisdiction of the common law courts to afford a remedy, yet, if it amounted to an unjust and unreasonable charge for the receiving and delivering, storage or handling of the wheat, in connection with interstate transportation, then it would be a violation of section one of this statute. It has not been indicated and is not readily apparent what other provision of the Act would be violated by the practice alleged. But if a case of violation of any provision can be shown there should be no bar to its prosecution ; and facts may be developed when it might become the duty of the Commission to proceed on its own motion under that provision of section twelve (as amended) which is as follows : "And the Commission is hereby authorized and required to execute and enforce the provisions of this Act."

Petition dismissed without prejudice.

THIRD ANNUAL REPORT

OF THE

INTERSTATE COMMERCE COMMISSION.

OFFICE OF THE INTERSTATE COMMERCE COMMISSION,
WASHINGTON, D. C., November 30, 1889.

To the Senate and House of Representatives :

The Interstate Commerce Commission has the honor to submit its third annual report, as follows :

ORGANIZATION OF FORCE AND DISTRIBUTION OF WORK.

Under the original Act to regulate commerce the Commission was required to report to the Secretary of the Interior, and the report was transmitted by him to Congress. By the amendments to the Act approved March 2, 1889, the Commission was required to report directly to Congress.

In submitting its first annual report under this amendment the Commission deems it appropriate to set forth the organization of its force for the systematic and efficient performance of its duties, and the character and distribution of the work.

The Commissioners themselves exercise a general control and direction over all the business of the Commission. They personally examine all complaints received, hear the trial of all controversies, conduct investigations, prepare all reports made, decisions rendered, and orders and circulars issued, allow subpoenas *duces tecum*, carry on the correspondence relating to the action and duties of carriers and the rights of shippers, and various other things.

The secretary acts as the executive officer and is also the

disbursing agent of the Commission, and is under bonds for \$20,000. His duties are varied, and relate to the Commission's records, mails, correspondence, service of papers, publications, distribution of documents, supplies of all kinds, payment of employees, disbursement of all moneys, and whatever else may be found necessary.

Apart from the Commissioners and secretary, the force is divided into three sections or divisions.

One of these has diversified duties and is practically the operating division. This division consists of one senior clerk, four stenographers, eight general clerks, two junior clerks, and one messenger—seventeen in all. There are also six temporary employees in this division, namely, one clerk, two stenographers, and three type-writers.

The duties of this division embrace the filing and service of all papers in cases and proceedings before the Commission; keeping the docket of such cases and the minutes of the Commission; entering and serving orders; filing and indexing correspondence; printing and mailing circulars and reports; copying and forwarding testimony in cases and investigations; the purchase of stationery and all other supplies for the Commission; keeping the accounts of disbursements and various other duties that may become necessary. The stenographers and type-writers in this division are also used by the Commissioners in the performance of their official duties, and usually take the testimony at public hearings.

Since December 1, 1888, 95 cases and investigations have been commenced before the Commission, in which 567 railroad companies have filed answers or have otherwise appeared. In the cases brought before the Commission during the year, 447 railroad companies have been notified of their pendency and granted leave to intervene. A large number of copies of complaints, testimony, and exhibits filed in cases before the Commission has been prepared in this division and furnished without charge to parties in accordance with the rules of practice. The number of folios thus copied and furnished exceeds 50,000.

The number of letters received in this division during the year, relating to official business, was 7,862. The letters

sent by the Commissioners and by the secretary during the year amount to 9,525.

Another division is the rates and transportation division. The head of this division is termed the auditor. In addition to the head, the force consists of one assistant auditor, one senior clerk, one stenographer, twenty-one general clerks, two junior clerks, and one messenger—twenty-eight in all.

This division has special charge of all railroad tariffs, classifications, contracts; the examination, comparison, notation of changes and files of these documents, and the correspondence relating to matters pertaining to this division.

The number of tariffs received for filing by this division since December 1, 1888, is, in round numbers, 180,000; number of separate letters and packages received containing tariffs and other papers, 45,000. Number of acknowledgments of receipts of tariffs, 50,000. Number of letters written and forwarded from this division, 2,500.

The other division is the statistical division. The head of this division is called the statistician. The other force consists of one assistant statistician, two senior clerks, one of whom acts as chief clerk; one stenographer, ten general clerks, and one messenger—sixteen in all.

This division has special charge of the annual reports made by the railroad companies to the Commission pursuant to the twentieth section of the Act to regulate commerce. This involves the examination of every report made; the correction of errors found therein, the compilation of the returns embraced in the reports, and the necessary tabulations of railway statistics for the report on that subject, together with the deduction of results therefrom, and the appropriate comment upon the data published. In addition to these duties, the investigation of the special questions in railway statistics is taken up from time to time.

The compilation of the returns of the railroads for the year ending June 30, 1889, is now in progress, and the statistical report will be submitted at as early a date as possible.

The preparation and distribution of the blank form of annual report for carriers, with accompanying pamphlets, is also part of the work of this division. The form for reports

for the current year was sent to more than 1,500 railroads in the United States. Eighteen different editions of this form, for as many different States, were furnished, on request, to state railway commissioners, with reference to the important object of bringing about greater uniformity in State and United States returns of the railway statistics of the country.

The correspondence of this division during the last year numbered about five thousand letters received and about the same number of letters and circulars sent out.

The names and compensation of all employees are given in appendix 1.

INVESTIGATIONS AND PROCEEDINGS BY THE COMMISSION.

The general sessions of the Commission for the hearing of complaints, and for investigations of a general character relating to the business of common carriers and the manner and method in which the same is conducted, are usually held, pursuant to the Act, at the city of Washington. This has been found more conducive to the dispatch of business and to the convenience of attendance from different parts of the country.

In addition to the sessions at Washington, sessions are also held and investigations made at various places in different parts of the country, whenever the subject of investigation is local, or the convenience of parties and witnesses will be subserved, or the Commission be likely to be better informed as to the peculiar facts of the case. In selecting points for investigations of this character the Commission is governed largely by the convenience of parties and witnesses; but, as is often the case, witnesses and parties on one side or the other are required to travel considerable distances, as it is rarely possible to locate hearings so that both sides to a controversy will be equally accommodated.

The number of formal hearings and investigations assigned at Washington since the last annual report is seventy-three. The greater part of these have been actually heard, more or less testimony taken therein, often extending through several days, and decided or otherwise disposed of; some are still held under consideration, and some have been continued.

During the same time complaints have been set for hearing, and investigations carried on, either by the Commission as a whole or by some of its members, at the following times and places: December, 1888, at Chicago, Ill., Toledo and Cincinnati, Ohio; January, 1889, at New York, N. Y., and Toledo, Ohio; February, at Philadelphia, Pa., New York, N. Y., Chicago, Ill., St. Paul, Minn., Baltimore, Md., and again at Chicago, Ill.; March, at Chicago, Ill., and New York, N. Y.; May, at New York, N. Y., Titusville, Pa., Toledo, Ohio, Chicago, Ill., Jefferson City and Kansas City, Mo.; June, at Newport News, Norfolk and Richmond, Va.; September, at New York, N. Y., Indianapolis, Ind., St. Louis and Kansas City, Mo., and Chicago, Ill.

Besides these, an extended tour of investigation was made by the chairman to the Pacific coast in July and August, going west over the Northern Pacific road and returning over the line of the Central Pacific and Union Pacific, and stopping over to make investigations into matters of interest relating to transportation and the operations of the Act at the following places: Chicago, Ill.; St. Paul and Minneapolis, Minn.; Bismarck, Dak.; Helena, Butte City, Anaconda, and Garrison, Mont.; Spokane Falls, Tacoma, and Seattle, Wash.; Portland, Oregon; San Francisco and San Jose, Cal.; Ogden and Salt Lake City, Utah; and Denver, Colorado.

The number of cases assigned for formal hearing by the Commission since the 1st of December, 1888, at other places than the city of Washington, is thirty-eight, besides a large number of less formal investigations.

The formal hearings and investigations constitute only a portion, and by no means the greater portion, of the administrative work of the Commission. Informal hearings, conferences, correspondence with shippers and with carriers relating to numerous transportation questions constantly arising, and the adjustment of such questions without formal complaint, necessarily require considerable time and careful attention. More differences between shippers and carriers, many of which arise from mistake or misunderstanding, are disposed of or satisfactorily arranged through the intervention of the Commission than by formal complaint. The

questions usually presented by formal complaint are mostly such as involve interpretations of the law, or relate to classification, to rates supposed to discriminate in respect to kinds of traffic or in respect to localities, and to facilities for carrying, interchanging, or forwarding traffic, and require on the part of the Commission a written report, with findings of fact and conclusions of law. Cases involving only charges of individual discrimination or injury resulting from some supposed contravention of the Act can in most instances be arranged satisfactorily to the parties, and often are so arranged, through the action of the Commission, without formal complaint or hearing.

INVESTIGATION OF SOUTHERN CARRIERS.

One of the first and most important investigations since the last report related to the management of the business of the common carriers operating in the territory south of the Ohio and James rivers, and to the manner and method in which their business was conducted, with reference to the provisions of the Act to regulate commerce. The Commission, having reason to believe, from examinations of the tariffs on file and from other sources, that the requirements of the Act were not in all respects complied with, and that there were irregularities of various kinds that should be corrected, summoned the officials of the various railroads associated for certain purposes under the name of the Southern Railway and Steamship Association, and others operating in the territory before mentioned, being twenty-eight in all, to attend at an investigation appointed for the purpose. The investigation was held at Washington on the 18th, 19th, and 20th days of December, 1888, and representatives of the various railroads summoned were present. A large amount of testimony was taken, and the investigation covered the whole field of classifications and tariffs, the methods of making and publishing rates, and the influences, whether water competition or otherwise, that were supposed to affect rates.

An elaborate report of the investigation was made, setting forth the conditions found to exist, and the corrections that were deemed necessary. The general results were as follows:

The greater charge for the transportation of a like kind of property for a shorter than for a longer distance over the same line in the same direction was found to be made at many points where it was deemed to be unjustifiable; the disparity between the charges made at different points on the same line was in some instances apparently much too great; the form of the tariffs as prepared in many cases did not meet the requirements of the law, and in other cases the tariffs did not show the rates actually charged to shippers; combination rates were made which were different from the rates specified in the tariffs as published and filed; the classifications in use were conflicting and involved, containing many exceptions and variations; different classifications were at times used upon the road of the same carrier for the shipment of the same commodity to neighboring points; at times two or more classifications were employed upon the same shipment, fixing a so-called combination rate upon the line of a single carrier, or of two or more connecting carriers, as is also done in some other portions of the country.

In these and some other respects the methods employed were not, in the judgment of the Commission, in conformity with the requirements of the Act to regulate commerce, and the Commission therefore ordered that the several carriers comply with the Act in the particulars pointed out, without unnecessary delay, and make report to the Commission of their action in the premises. The reports made by the carriers pursuant to this order, and the tariffs filed, show that material changes and improvements have been made in compliance with the order.

CIRCULARS.

On the 2d of March, 1889, the amendments made by Congress to the Act to regulate commerce took effect. By these amendments material changes were made in the statute in respect to the filing and publication of tariffs, and in several other particulars. The Commission at once caused the Act as amended to be printed and distributed to the common carriers of the country, and generally for public information.

On the 12th of March the Commission issued and distrib-

uted a circular to all the carriers subject to the Act in respect to the printing, posting, and publication of schedules of rates, a copy of which is set forth in Appendix 2.

On the 23d of March a further circular was in like manner issued and circulated in respect to advances and reductions in joint rates, and the publication of joint tariffs, calling attention to the provisions of the Act as amended. This circular is given in Appendix 3.

CONFERENCE WITH STATE RAILROAD COMMISSIONERS.

On the 5th, 6th, and 7th of March a general conference with the railroad commissioners of the States was held at Washington, pursuant to an invitation for the purpose issued by this Commission on the 31st of January, 1889.

The proceedings of this conference are elsewhere described in this report.

CONFERENCE WITH TRUNK LINE CARRIERS.

On the 16th day of March, 1889, a conference was held at Washington, pursuant to a notification issued by the Commission, with representatives of the common carriers comprising what is known as the Trunk Line Association. The purposes of this conference, and what appeared, are elsewhere stated in this report.

PASSENGER RATES.

On the 21st of March, 1889, upon the request of the officials of the passenger department of the Central Traffic Association, a conference was held at Washington on the subject of passenger rates, which was attended by a large number of general passenger agents from different sections of the country, and by officers of several traffic associations. The subjects of the conference covered passenger rate-sheets; the form in which they might be prepared and be most convenient for public information; the manner in which through rates over different lines might be made, and the posting of such rates; the making of various special rates, such as round-trip tourist rates, so-called party rates, car-load passenger rates and others.

A report of the conference was made and published by the Commission, and the views of the Commission upon some of the subjects considered and discussed were set forth.

CONFERENCE WITH SOUTHERN CARRIERS.

Pursuant to a request by representatives of some of the southern railroad lines who had attended the conference with representatives of the Trunk Line Association, a conference was held at Washington on the 2d of April, 1889, with representatives of most of the southern and southwestern common carriers, forty in all, and a large amount of testimony was taken. Another portion of this report refers more fully to what was elicited on this investigation.

AMENDED RULES AND FORMS.

By the seventeenth section of the statute, it is provided that the Commission may, from time to time, make or amend such general rules or orders as may be requisite for the order and regulation of the proceedings before it, including forms of notices and the service thereof, which shall conform, as nearly as may be, to those in use in the courts of the United States. Under this authority, the Commission, on the 8th of June, adopted revised and amended rules of practice in cases and proceedings instituted before it under the act, and prepared a set of forms for the use of parties to such proceedings; these were printed and distributed generally throughout the country. These rules and forms are given in the Appendix.

FREE PASSES AND FREE TRANSPORTATION.

On the 3d of May the Commission entered upon an investigation concerning free passes and free passenger transportation. Information received from time to time had given reason to believe that passes for interstate transportation, or having some relation to interstate business, were issued to some extent at least by some if not most of the railroad companies. The intention of the Commission was to make the investigation general, covering all the interstate lines of the country, but pressure of other business compelled the post-

ponement of much of the investigation to a later period. As the investigation has not been completed only a limited report upon the subject can be made at the present time.

The companies first summoned were those operating in the Middle and New England States, twenty-seven in all. They were called upon, by order, to answer and set forth the persons and classes of persons to whom they had severally issued free passes or free transportation other than their own officers and employees and the officers and employees of other railroad companies since November 1, 1888, and the conditions and limitations connected therewith, with explanations showing how and why these acts were done; and the statements to be properly verified.

Representatives of all the companies summoned appeared at the hearing in Washington, and all except three companies produced statements in compliance with the summons, showing the number of passes issued, the persons and classes of persons to whom issued, and the reasons for their issue. The three companies that furnished no statements of the character called for answered that they issued passes to be used only within their respective States, and that for such transportation they were not subject to the act to regulate commerce, and therefore declined to show to what persons, or for what reasons, the passes were issued. Whether or not companies taking this ground can be compelled to disclose the particular persons to whom free transportation was given, in order that it may appear whether the passes were intended or used for interstate journeys, or are in any respect a device to favor interstate shippers, has not yet been determined.

The statements filed by the companies that produced lists show that passes have been issued to divers classes of persons, and for a variety of reasons, but mainly for use within a State, and claimed for that reason not to be in violation of the act to regulate commerce. It also appears that to a limited extent passes for interstate journeys have been issued by many of the companies.

The persons who have had free transportation as shown by these returns are embraced in the following classes: Railroad directors; drovers; expressmen; telegraph men; news com-

pany agents; officers of palace car companies; managers of excursions and shows; persons injured on railroads, transported to their homes; attorneys; surgeons; persons on company's business; in consideration of contracts for purchase of land, water rights, and rights of way; for services rendered; witnesses for companies; in consideration of advertising; hotel and boarding-house proprietors; newspaper men; shippers; complimentary; special car accommodations; to persons on request of others, no reason given; for charitable purposes; benevolent associations; ex-employees, and families of deceased employees; members of legislative bodies; State railroad commissioners; United States, State and municipal officers; employees of the railway mail service; officials of steamship and steamboat lines.

Under some of these classes the transportation has been very limited. Under others the numbers carried have been more numerous, but that a great diminution of free transportation has taken place since the Act, especially in interstate transportation, is very evident.

Some of the classes carried free there would seem to be no reason to question the propriety of, such as persons injured in railroad accidents, surgeons attending such persons, and witnesses for companies in judicial proceedings and investigations. Where contracts have been entered into prior to the Act for free carriage of specified persons in consideration of conveyance of rights of way or other property rights to companies, courts have held in some instances that that they were enforceable, and rested upon lawful considerations. Employees of express companies and telegraph companies operating upon a line of railroad under agreements with the railroad company, and employees of the railway mail service, are clearly distinguishable from ordinary travelers.

With respect to nearly all the other classes to whom free transportation has been given, it would seem clear that no justification can be found for their carriage under the provisions of the Act.

According to the returns made, the largest number of interstate passes issued of any class was designated "c ompli-

mentary." Next in numbers were passes to steamship lines and transfer companies, United States, State, and municipal officers, palace-car companies, newspapers, and for advertising. The several other classes were small in proportion.

Of State passes the largest numbers were issued to members of legislatures, and drovers, with "complimentaries" next, and United States, State and municipal officers, newspapers, and shippers next in numbers; the others being comparatively few.

The statute undoubtedly was framed to prohibit passes or free transportation of persons, as one of the forms of unjust discrimination, favoritism, and misuse of corporate powers that had grown into an abuse of large proportions and become demoralizing in its influence and detrimental to railroads, both in loss of revenue and in provoking public hostility. One of the minor and meaner phases of this abuse is the distinctive preference shown in various ways by employees, both in service and civility, to holders of passes, as if discrimination by free carriage includes discrimination in treatment of passengers.

It was well known that persons who were carried free were, to a large extent precisely the persons who had no claim whatever to such favors. They were officials and others, from whom free passes might be expected to secure reciprocal favors, and men of wealth and prominence who rode at the expense of others less able to pay; or the passes were given to influence business. In nearly all cases not specially exempted by the Act, the motive in demanding or in giving them was one deserving of no favor.

The law aims at the correction of the abuses of free transportation, and in accomplishing this general purpose some forms of free or reduced transportation that at first view might appear plausible, or even unobjectionable in themselves, have to fall under its general restrictions. The principle of equality, under like conditions, for the traveling public had been grossly violated by the railroads. Favored persons or classes of persons had been furnished free transportation at the expense of the general public by higher general charges to reimburse for gratuitous carriage. The dis-

crimination is equally unjust whether the free transportation be complimentary or to aid some person's business, or for some supposed indirect advantage to the carrier. The correction of the evil, and the equality of right to which all are entitled, required the restrictions to be general and sweeping to furnish any substantial assurance that the abuse should not be continued or new ones devised under cover of any discretion left to the carrier.

For reasons deemed adequate by the legislative body certain specified exceptions are made in the statute of classes of persons to whom reduced rates or free transportation may lawfully be given, in whose favor discrimination was not deemed unjust. The Act provides that it shall not "be construed to prohibit any common carrier from giving reduced rates to ministers of religion, or to municipal governments for the transportation of indigent persons, or to inmates of the national homes or state homes for disabled volunteer soldiers, and of soldiers' and sailors' orphan homes, including those about to enter and those returning home after discharge, under arrangements with the boards of managers of said homes." It further provides that it shall not "be construed to prevent railroads from giving free carriage to their own officers and employees, or to prevent the principal officers of any railroad company or companies from exchanging passes or tickets with other railroad companies for their officers and employees." The classes of persons that may have reduced rates or free carriage are thus carefully specified in the statute, and their enumeration necessarily excludes all others. Except as qualified by this section, the issuance and sale of passenger tickets must be in accordance with the general principles of the Act.

The investigation developed one custom of railroads that seems to be general and to rest on considerations that have no little force. This is the custom of giving free transportation or reduced rates to families of subordinate employees. It is obvious, that for many forcible reasons, the most amicable relations should exist between the railroad companies and their employees, and that the latter should feel that the companies are disposed in all proper ways to manifest an

interest in their general welfare. The compensation of these employees is low, the service exacting and often hazardous, their opportunities to give attention to domestic affairs are very limited, and as a rule they are dependent almost entirely on their compensation for the support of their families. It is clearly for the interest of these employees to reside at points on their roads convenient to their business, where homesteads can be acquired, and cost of rents and living expenses are moderate. Such locations may often be some distance from points required to be frequently reached by members of their families, such as schools and markets, and it would seem reasonable, and no more than an equitable part of their compensation, for the company to carry the wives and children of its employees free, or at low rates, for fairly necessary purposes. Provision, it would seem, might very properly be made to permit this to be done.

As the investigation of this subject has not been concluded, any further report or action by the Commission is deferred until more complete information shall have been elicited.

PASSENGER TICKETS AT REDUCED RATES.

Among the reduced-rate tickets which were in use before the law to regulate commerce was passed, and which may be lawfully issued since its passage, are mileage, excursion, and commutation tickets.

After investigation of alleged abuses in the issuance and sale of these tickets, the Commission held, March 27, that they must be offered impartially to all who accept the conditions on which they are issued, that the rates at which they are issued must be published, and that a practice which had grown up of selling tickets for ten or more persons at party rates, or rates considerably below the rates for single passengers, was illegal.

The mileage ticket is one form of a reduced-rate ticket which had a well-understood meaning before the Act. Besides mileage, commutation, and excursion tickets, there were various other forms in which tickets were sold at reduced rates. Special and reduced rates were obtainable without regard to the form of the ticket, and the meaning of

commutation and excursion tickets was neither exact nor well defined.

Commutation tickets are commonly understood to be tickets sold for a gross sum at reduced rates for a number of rides between given points. Ordinarily, excursion tickets are understood to be round-trip tickets sold at reduced rates, issued for one trip and on special occasions, sometimes for health or recreation, and sometimes for army or industrial re-unions and assemblages for political, religious, or benevolent purposes. It is sometimes urged that the only characteristic feature of these two tickets before the Act was their sale at reduced rates, and that, substantially, all forms of reduced-rate tickets come within the description of commutation or excursion tickets, and may be lawfully issued. Various practices are in use by which they may be made available for a journey of any description, and frequently for ordinary travel, and are good alike for picnics and prize-fights.

In view of evil practices in the use of these tickets ascertained on investigation, the Commission, in January, felt constrained to recommend that the Act to regulate commerce be so amended as "to define what shall be considered excursion and commutation tickets, and to so restrict their issue in interstate commerce as to prevent the abuses now so common."

COMMISSION ON THE SALE OF TICKETS.

Another investigation was held at Washington on the 7th of May, in respect to commissions on the sale of tickets, to which twenty-seven companies were summoned and which was attended by representatives from the different companies. The subject of commissions to ticket agents has heretofore been reported upon by the Commission, and its bearings and the evils supposed to be connected with it discussed. The object of the investigation was to ascertain the extent of the practice, the conditions under which it is carried on, and the carriers that engage in it. The roads summoned were principally those of the West and Northwest that operate in the territory reached from Chicago, where the

Nearly all the roads operating south and west and southwest of Chicago, it appeared by the returns made, pay commissions upon passenger tickets to ticket agents of other lines. The commissions paid to agents of connecting lines on competitive business were represented to be those fixed by the Western States Passenger Association, in effect from February 1, 1889, and the amounts paid ranged from 25 cents to \$1 a ticket, depending upon the cost of the ticket and distance traveled. The maximum paid in any case was represented to be \$1 for certain distances and more for longer distances. Other roads, operating eastward from Chicago, it was shown, pay no commissions to agents of other lines. Some roads, it was shown, pay some of their own agents by commissions upon sales of tickets, instead of salaries.

Commissions, however, may be, and, as the Commission has learned, sometimes are, cumulative; as, for example, \$1 from New England points to Chicago, \$1 from Chicago to the Missouri river, and \$1 from the Missouri river to Denver. In addition to these sums some roads may pay 10 per cent. commission on their earnings for a passage to a traveling passenger agent of, say \$1.20, making a total for the sale of a single ticket of \$4.20. In cases of commissions of only \$1 for short distances there may be no inducement for the agent to divide with the passenger, but in cases of cumulative commissions for long distances the temptation to divide is stronger, and the probability of abuse is so great that the impropriety of putting the opportunity before an agent is manifest.

Viewed in another aspect, the amount of money paid annually by the larger companies is vast; it is not unusual for a single company to pay a sum approaching \$100,000, or even more, in a year, and the aggregate undoubtedly reaches millions of dollars. This money is illegitimately spent; it is paid in excess of salaries to agents for the purpose of diverting business from competitors, and when competitors all do it, it is difficult to see how any benefit can accrue from it to any company. The money so spent of right belongs to the stockholders, or should be remitted to the public in reduced fares; if the rates are not in fact too high, the money wasted

for commissions should be expended for improved service, or toward the safety of passengers and employees.

This practice has frequently been condemned by this Commission as one of very doubtful benefit in any case, and of positive injury in others; as one that affords opportunities, too often improved, for discriminations and fraud in the sale of tickets, and as, generally, a source of demoralization.

CAR MILEAGE.

On the 8th of May an investigation was held at Washington in respect to car mileage, or compensation paid by railroads for the use of cars belonging to other railroad companies or to private companies or individuals. Information had been received giving reason to believe that the payment of car mileage for cars owned by private shippers had in some instances been made use of as a cover for discrimination in rates, and the Commission deemed the subject of enough importance for an investigation.

Twenty-six railroad companies operating in the territory extending in different directions from Chicago, and engaged in the business in which discriminations by allowance of car mileage were supposed to exist, were summoned to make a showing of the allowances paid by each of them for car mileage for the different classes of cars furnished by shippers, car companies and individuals, or connecting lines; how the business was conducted; and what sum was, in their opinion, a fair and just allowance for the different classes of cars. The companies appeared by their representatives, and produced their statements and testimony relating to the subjects of inquiry. The facts elicited were substantially as follows:

The mileage paid for different classes of cars, and for the same class of cars, is not uniform by different companies, nor by the same companies, except for ordinary freight cars exchanged between companies in the course of transportation. The rates allowed for car mileage were shown to be as follows: For ordinary freight cars, a uniform rate of three-fourths of a cent a mile; for Pullman palace cars, 3 cents a mile; for Pullman palace tourist sleepers, 1 cent a mile; for ordinary passenger cars exchanged with other companies,

3 cents a mile ; for baggage, mail, and express cars exchanged with other companies, $1\frac{1}{2}$ cents a mile by some roads and 3 cents a mile by others ; for refrigerator cars used for carrying dressed beef, 1 cent a mile in some cases and in other cases three-fourths of a cent a mile ; for furniture cars, oil-tank cars, palace live-stock cars, and other cars owned by private individuals and companies, three-fourths of a cent a mile. Some companies pay mileage on tank cars both loaded and empty, and some only when loaded. For palace horse cars no mileage is allowed on some roads, shippers in such cars paying for the car. Since May 1, 1889, the roads running east and southeast of Chicago, with the exception of one company, have allowed three-fourths of a cent a mile for refrigerator cars. The one road referred to allows 1 cent a mile.

It appeared by the evidence adduced that one of the roads west of Chicago had entered into a contract with one private company owning a large number of refrigerator cars, and who are also shippers, to pay 1 cent a mile on such cars for a period of five years, the private company agreeing to furnish sufficient cars for their own business and for all other like business requiring that class of cars. This was naturally followed by all of the competing roads, with perhaps one exception, paying the same rate of car mileage on that class of cars ; and that is accordingly understood to be the rate on the different roads in the competitive territory.

A forcible illustration of the results of car mileage to owners of private refrigerator cars appeared by a statement put in evidence from the books of a railroad company, showing the mileage made, and earnings of some of such cars, for nine months, from August 1, 1888, to May 1, 1889. During that period the mileage for which compensation was allowed, made by the cars of three shippers, from Chicago to an eastern point, and over a single line of road, was 7,428,406, and the earnings of the cars \$72,945.97, being about the cost of 81 cars. The mileage allowed during most of this period was 1 cent a mile, and three-fourths of a cent a mile for a part of the period. Refrigerator cars run on fast time, and make four times the mileage of ordinary freight cars.

The cost of the investment in cars and the amount of mile-

age allowed for their use show that the investment is very profitable. Refrigerator cars cost from \$900 to \$1,000; private cattle cars cost about \$650; oil-tank cars about \$610; cars used for the transportation of live hogs about \$500; ordinary freight cars from \$450 to \$500. Repairs to the cars are made by the railroad company in whose use they are when repairs are required. The life of a box car averages fifteen years, and of a refrigerator car eight years. At a car mileage rate of 1 cent a mile the profit on the investment in many of these cars is very large, reaching, according to information acquired by the Commission, 25 per cent., 50 per cent., and even more, annually. Sometimes a car will pay for itself in two or three years. Owners of several hundreds of such cars, therefore, receive a very large amount of money from the railroads over which they are hauled, and it is easy to see how it is possible, out of the large returns from these cars, for owners to pay rebates to shippers, if so disposed. The evidence taken in the case did not prove the payment of rebates to shippers by owners of any of these cars, but it was quite clear that some of the officers of railroad companies who were examined had impressions that such might be the fact. It is also evident that the payment of either one cent or three-fourths of a cent a mile to a large shipper owning and controlling his own cars and furnishing business therefor constitutes a very profitable incident to his legitimate business, and is at least a material advantage to the man owning cars over the man who owns none.

In the original draft of the report, as submitted, it was stated that another illustration in which car mileage is a factor is furnished by the Pullman palace cars and similar cars, and that the rate of car mileage received was 3 cents per mile. This was founded on evidence before the Commission. Evidence since submitted shows this rate is paid by only a portion of the roads under old contracts outstanding, and that under recent contracts with some companies the rate is 2 cents per mile. The evidence also shows that on roads where the earnings of a car from passenger accommodations reach \$7,500 no car mileage is paid. The report of the Pullman Company for the year ending July 31, 1888, shows rev-

enue (\$6,259,370.97, car earnings; \$1,239,565.93, manufacturing profits; \$10,817.48, from patents) from all sources, \$7,509,754.38. Car earnings are explained by evidence not to include car mileage, but arise from passenger accommodations. The aggregate car mileage has not been shown. After deducting operating expenses and some other items, the total net earnings were first stated to be \$3,957,771.87. From this deductions are claimed for interest, repairs and depreciation of cars, reducing materially the previously stated profits of 20 per cent. on the capital stock, \$19,872,900. Although the results on the whole business of the company show larger profits than those of railroads generally, the exact extent to which car mileage is a legitimate factor can not be determined without more facts than have as yet appeared from satisfactory evidence.

The use of these cars is an excuse for furnishing inferior passenger coaches by the roads. The traveling public are burdened with high rates for transportation in these cars, or subjected to inferior accommodations in ordinary coaches. If any portion of the public desires to pay higher rates for special accommodations there can be no objection to their doing so, but the provision for the superior accommodations should not become a charge upon the general transportation. In England, where different classes of passenger cars are furnished, striking results have been produced by the provision of suitable cars of the third class. That class of cars has of late absorbed the bulk of the travel, and furnished the revenue to the roads from their passenger business, while the first and second-class cars, with the superior accommodations, have become a tax upon the other business.

Illustrations might also be drawn from the use of the cars of the numerous fast freight lines that operate generally over the railroads of the country. These lines derive their revenue from the roads upon which they are operated, and as a rule are highly profitable, while the roads proper show very different results. This revenue accrues from payments for car mileage, and from commissions for procuring traffic, which in effect are divisions of earnings between the roads and irregular outside organizations.

So far as rates upon traffic are concerned, whether for freight or passengers, their reasonableness can probably be controlled without regard to the source from which cars are supplied. Any railroad company voluntarily using a car in its business, no matter how obtained, in legal contemplation makes the car its own for all the purposes of rates and of safe carriage. It can not escape its duty to charge only reasonable rates, or its liability for the safe carriage of persons or property on the ground that its cars may not be its own property, or that a high rate may be paid for their use.

With regard to the sum that may be considered a reasonable allowance for the use of freight cars, the general opinion expressed on the investigation was that three-fourths of a cent a mile is ample, and many regard even that as too high a rate. In the case of cars interchanged between railroad companies the mileage nearly equalizes itself, and does not bear very disproportionately upon any one company; but in the case of the private ownership of cars there is no reciprocity, and the payment of three-fourths of a cent a mile may be a burden to the carrier, besides the other objections that have been mentioned.

It is an obvious deduction from all the facts that cars for the various kinds of business done by a carrier should be owned by the carrier itself and furnished to all alike, or, if owned by the shipper, only such reasonable allowance for their use should be made as to permit no advantage to the private owner of cars who is also a shipper, nor afford a margin for paying rebates to other shippers.

FREE CARTAGE.

On the 17th of June most of the leading railroads, five hundred and eighty-five in number, were summoned by circular to furnish the Commission with information with regard to free cartage delivery of freights and to have their answers duly verified by some officer of their companies with knowledge of the facts. They were required to state at what stations on their lines they made free cartage delivery, if any, and of what class of freights; whether such stations, or any of them, were grouped with any other station or stations on

• their lines at which the same transportation rates were charged as to like freights delivered with free cartage; how long the system of free cartage delivery of such freights had been made; what its origin and all the facts, circumstances and conditions, if any, that induced it to be done; whether it resulted in competitors making free cartage delivery at the same stations; what effect, if any, such free cartage had upon rates at such stations, as compared with rates at other stations; whether their rate sheets or tariffs made any, and what reference to free cartage where it existed; what estimate they made of the actual cost of such free cartage at the stations where it was done. Four hundred and sixty-three companies responded to this circular. By the answers received it appears that sixty-five railroad companies allow free cartage delivery of freight or equalizing cartage allowances; that three hundred and eighty-nine railroad companies do neither; that seven railroad companies only deliver free to connecting lines freight shipped on through tariffs; and that two railroad companies only switch cars free to mills and manufactories.

It further appears by these returns that no company furnishes free cartage delivery at all its stations, but as a rule, only at few stations; that in some instances, when free cartage is furnished at a station by one company, competitors do the same, but it does not appear that that is generally done; that in no instance do the rate sheets or tariffs give any information about free cartage delivery; that the estimated cost of free cartage delivery will average about $2\frac{1}{2}$ cents per 100 pounds; that where allowance is made for switching on connecting tracks to consignees' doors, or where an allowance is made per car to equalize distance from shippers' doors to depot, the average cost is about \$2 per car, or \$2.50.

As a case is pending before the Commission involving the lawfulness of free cartage collection and delivery of freight, no further comment is made on this subject.

With respect to two of the foregoing subjects of investigation, commissions and car mileage, their nature and magnitude clearly demand legislation to restrain their evils and make correction effective. Acts supposed to promote busi-

ness interests, however inconsistent with a sense of right and of just accountability to others whose interests are represented, are not usually restrained by moral or public considerations, or by anything less than positive law. Railroads are constructed for business purposes, and are expected to produce profits; they are not different in this respect from other business undertakings. If managers are ambitious for a larger showing of business, or more revenue is necessary to insure profits, or even to balance accounts, they have not infrequently felt at liberty to make use of methods that have no better sanction than that the end justifies the means. But managers of this character are undoubtedly in a small minority; conservative and upright managers regard such practices with no less abhorrence than the general public, and legislation is required for their protection no less than for the public protection. The best managed road may find its business diverted and its revenues impaired by a weak but unscrupulous competitor, and in self-defense feel compelled to retaliate. This may not be the course of wisdom nor defensible on any just grounds, but it is one of the well-known facts of experience.

TICKET BROKERAGE.

Another subject of general notoriety related to some of the foregoing, and universally recognized as an abuse of gross character and large extent, and which, in the opinion of the Commission, urgently demands legislative action, both for public reasons and to regulate dishonest competition, is ticket brokerage or scalping as usually termed. The Commission has made investigations concerning it, and has frequently expressed condemnation of the practice, setting forth its dishonesty, and the discrimination and evils to which it leads, and urged managers of railroads to relieve themselves from its odium and wrong. There is no indication, however, that the practice is diminishing; on the contrary, it flourishes with unabated boldness and success in many of the cities of the country, including the national capital. As dealers in these irregular sales are not recognized as agents of the railroads, nor as connected with any company, but as independent

operators, there are difficulties in enforcing legal remedies against them under a law framed to apply to carriers and their proper officers and agents.

It is sometimes said that railroads can destroy ticket scalping whenever they see fit, by ceasing to countenance or connive at the practice. This is doubtless true, but one or two reckless roads, indifferent to the methods by which they procure business, may be able to defeat the best purposes of a great majority of roads that oppose the evil and desire its abatement.

Some of the States have legislation that is understood to be preventive of ticket scalping, and similar provisions, incorporated in the Act to regulate commerce, may prove efficacious. They are, in substance, that any person authorized to sell passenger tickets shall have and exhibit a certificate from the company or companies upon whose lines he sells tickets, and the companies to be responsible for his acts; and that it shall be unlawful for any other person to sell tickets, under suitable criminal penalties.

QUESTIONS DECIDED.

The decisions of the Commission in contested cases have related more largely to rates than to any other incident of transportation. A statement briefly setting forth the points passed on in the various cases decided is contained in Appendix 4. Another statement in the Appendix shows the cases that are still pending and undetermined. Some of the more important decisions rendered are briefly referred to here and some elsewhere in this report in connection with particular subjects.

One of these, announced early in the year, related to passenger tariffs and rate wars, and various matters relating to the publication of tariffs, the reduction of rates, employment of ticket brokers and scalpers for the sale of railroad tickets, the illegality of lower rates obtained from brokers, and the existing methods respecting excursion and mileage tickets were examined, discussed, and the views of the Commission with regard to them expressed.

In two cases, one arising in Illinois and the other in Pennsylvania, the practice of making group rates upon soft coal was presented, and, under the conditions found to exist in

both cases, a group rate for a district of considerable size was found to be reasonable and not in contravention of the provisions of the statute. A group rate upon an article of traffic for a district of country where the circumstances as to the character of the commodity, the extent of the public demand for its use, and sometimes the nature of the competition existing in its transportation, has been considered by the Commission as warranted by the provisions of the Act, and in most respects conducive to the public welfare.

In other cases through rates for long distances, and the relation of local rates upon the same line to the proportions of through rates, have been several times considered and applied. In all these cases the Commission has adhered to the rule it had previously laid down, that through rates are not required to be the sums of locals, but may lawfully be lower so long as they are not unreasonably disproportionate, or unjustly discriminating against individuals or localities, or so low as to burden other business with part of the cost of the business upon which the through rate is charged; but that rates should be reasonably proportional, and, distance being usually an element of importance, a proper regard to distance proportions should be observed in connection with any other considerations that may be found material in fixing transportation charges.

In another case the question of relative rates upon different branches of the same road was considered upon the facts presented in the case, and it was ruled that railroad service may be rendered under such dissimilar circumstances as to make it lawful to charge more for the same distance on one branch than on another branch of the same road; that the departure from the rule of equal mileage charges, as applied to several branches of a road, is not conclusive that such rates are unlawful, but in such cases the burden is on the company making the departure to show its rates to be reasonable when challenged.

A case of some importance in respect to the principles involved was brought before the Commission, relating to the application of the provisions of the Act to regulate commerce to international commerce with Canada. The particular controversy was in respect to rebates allowed upon coal to con-

signees in Canada upon continuous shipments from a point in the United States. The Commission regarded the **Act** as intended to regulate all commerce originating **in** the United States, and destined by continuous **carriage** to or into a foreign country, as well as **commerce** originating in a foreign country and destined to a place in the United States by continuous **carriage**. It was accordingly ruled that the **Act** applies as well to foreign as to domestic common carriers engaged in the transportation of passengers or property by continuous carriage or shipment from a place in the United States to a place in an adjacent foreign country, and that such common carriers are subject to the provisions of the **Act** respecting the printing of schedules of rates, fares, and charges for the traffic carried, the posting and filing with the Interstate Commerce Commission of copies of such schedules, the notice of advances and reductions, and the maintenance of the rates, fares, and charges established and published, and in force at the time; that such common carriers are also subject to the provisions of the **Act** in respect to joint tariffs of rates, fares, and charges for continuous lines or routes; and that, pursuant to the seventh section of the **Act**, the carriage of freights cannot be prevented from being treated as one continuous carriage from the place of shipment to the place of destination, by any means or devices intended to evade any of the provisions of the **Act**.

A case was again brought before the Commission involving the rights of colored passengers in respect to the character of their transportation upon lines of road in some of the Southern States, and the principle that colored passengers paying the same fare are entitled to equality of accommodations and treatment was again affirmed and applied by the Commission.

The Commission had occasion to consider with care the question of practice involved in the allowance of subpoenas *duces tecum*. It had been found in some instances that parties, without leave of the Commission, would serve subpoenas *duces tecum* upon common carriers, requiring them to produce upon a hearing a wholly unreasonable and mostly unnecessary amount of documentary evidence, subjecting a company

to burdens in the form of expense and labor of its employees to prepare the documentary evidence, that were regarded as unjustifiable and oppressive. The Commission, therefore, laid down certain general principles in regard to the allowance of subpoenas *duces tecum* and the production of books and documentary evidence, defining the manner in which documentary evidence may be called for, the kinds of evidence proper to be called for and produced, the distinctions to be made between custodians of documentary evidence who are parties and who are not parties to a proceeding, and regulating the practice, as it was thought, upon a reasonable basis.

In another case the question of the mode of making rates upon the shipment of live cattle was presented and passed upon. A practice had existed among the carriers in large sections of the country to make a car-load rate irrespective of the weight carried, and to permit the shipper to load into the car as many cattle as he pleased or as he was able to put into it. The carriers substituted for this the rule that, while naming a car-load rate, they prescribed a minimum weight for a car-load, and then charged by the hundred pounds, in proportion to the car-load rate, for any excess over the minimum. The shippers complained that this substituted rule was unlawful and that they suffered prejudice by reason of its enforcement. They emphasized the complaint by showing that State commissions, in the district affected by the new rule, retained and enforced upon State transportation the former practice, thereby, as they insisted, putting interstate traffic at a great disadvantage. The Commission decided, however, that the new rule was not unlawful. The former practice, when, as is well known, the cars were of different sizes, almost necessarily led to discriminations and to favoritism as between shippers, and on the face of it the new rule was more just and reasonable than the practice it supplanted since the charge would be more in proportion to the service rendered.

Whatever might be the action of the State commissions in the premises it was held that it could not be allowed to control in respect to interstate traffic, inasmuch as, if it did, the

regulation of interstate traffic would, to some extent, be relegated to State commissions. The new rule also corrected some incidental difficulties and abuses in the transportation of live cattle which always attended the old practice, especially in the temptation it held out to the overloading of cars. Shippers complained that difficulties were found to exist in practice in the prompt and accurate weighing of cattle, but this was held not to furnish a reason for abolishing the new rule, but rather, on the other hand, for improving and perfecting it.

QUESTIONS DECIDED BY UNITED STATES COURTS.

Since the last annual report some questions arising under the Act to regulate commerce, and involving interpretations of its provisions, have been presented to and passed upon by courts of the United States. These are given for public information.

In a decision announced by the Commission in August, 1888, it had been held that a certain corporation, chartered by name as a bridge company, had by its charter the powers and rights and was subject to the obligations of a common carrier; that it was a common carrier in fact, and was therefore entitled, under the third section, to demand interchanges of traffic with a railroad company with which it had track connections that were not strictly at a station or depot, but convenient for the purpose of interchange. The case was subsequently presented to a circuit court of the United States, under a somewhat different showing, and it was held by that court that the bridge company was not to be deemed a common carrier, and could not lawfully demand interchanges of traffic and through rates with the railroad company under the facts and circumstances of the case.

In another case in which the Commission had ruled that a through route and through rate could not be enforced in favor of a carrier making application therefor, and connecting at each terminus with other carriers, the same question came before one of the courts of the United States, and the same ruling, in effect, was made.

In an original case that arose in a United States circuit court, under the amendment to the twenty-second section of the Act giving jurisdiction to the circuit and district courts of the United States to require a common carrier by mandamus to move and transport interstate traffic, or to furnish cars or other facilities for the transportation of such traffic, it was decided that a shipper of live cattle is not entitled to have his cattle carried in cars of a special construction of his selection belonging to a third party, and superior to ordinary cattle cars, by reason of the fact that the carrier transports some cattle in other cars, available to all shippers equally, which have some of the improvements of the former, but are furnished by another party under a special contract, and which, unlike the cars desired by the shipper, by reason of their peculiar construction, can be used in the chief business of the road, which in that case was the carriage of coal when not in use for cattle; and that the refusal to use the cars desired by the shipper in that case did not constitute unjust discrimination.

In another case in one of the district courts of the United States, in which an official of a railroad company was indicted for unlawful discrimination under the Act to regulate commerce, the official was convicted in the trial court, and upon a review of the case it was held by the court that the transportation by a railroad company to a certain point on its line of freight received from a connecting carrier which had reserved a right to forward the property by any carrier it might select, especially where the freight thereon was to be paid at the point of destination by the purchaser, is not a service rendered for the party by whom the through shipment is made, but for the connecting carrier, and therefore that there may be an unlawful discrimination between the charges for such service and for a shipment by the same shipper to the same consignee at the same destination over the local line alone, and that an unreasonable adjustment of joint rates for through transportation may constitute an unreasonable discrimination against local traffic. The court further held that the question whether the difference in rates for transportation of local traffic and through traffic is rea-

sonable or unreasonable is a question of fact for the jury, and the conviction of the official was affirmed.

An important decision covering many points of interest in railway transportation, though not under the Act to regulate commerce, was rendered by the United States circuit court for the southern district of Iowa, in a suit brought by a railroad company against the railroad commissioners of the State of Iowa. The case related to the schedules of rates for transportation within the State prescribed by the State Commissioners under a statute of the State.

It was held in the case that the Federal courts have jurisdiction in a suit against State railroad commissioners brought by a corporation of another State to restrain the enforcement of a schedule of rates prepared by such commissioners, under a State statute claimed by the complainant to be unconstitutional; that the authority conferred upon the railroad commissioners by the legislature to make and put in effect a schedule of rates for railroad transportation within a State is not an unconstitutional delegation of legislative power; that the provision of the Act making the commissioners' schedule *prima facie* evidence that the rates fixed thereby are reasonable is not an infringement of the constitutional guaranty of the right to trial by jury, nor of the provision against deprivation of property without due process of law; that an inquiry by the courts into the reasonableness of rates established by State authority, notwithstanding the forms of law have been pursued in prescribing a schedule of rates, may be made, and must be decided in each case whether the rates prescribed are within the limits of legislative power or are mere proceedings which, if not restrained, will work a confiscation of property; that the courts have no power to interfere with rates for railroad transportation fixed by statute when such rates will give some compensation, however small, to the owners of railroad property, but it is their duty to interfere when the rates prescribed will not pay compensation to the owners—that is, some dividend to stockholders after payment of fixed charges and operating expenses; that State legislation which deprives the owners of a railroad line within the State of all compensation from their business can

not be upheld on the ground that the company is a foreign corporation and is permitted simply to do business within the State, and is at liberty to abandon its business if found unremunerative; nor can it be upheld on the ground that the railroad affected thereby is an interstate road and that its deficiency of revenue may be made up by receipts from interstate commerce or from traffic in other States, or on the ground that a future increase of business may render the prescribed rates remunerative. And it being found that the rates prescribed were not remunerative to the railroad company, an injunction was issued restraining the enforcement of the schedules.

PUBLICATION AND FILINGS OF TARIFFS.

Publicity of rates is, in itself, a powerful factor in the correction of the evils of unjust discrimination, extortion, and unlawful preference. By this means a record, open to public inspection and criticism, is kept of rates as they actually exist at the time. The shipper can see for himself what they are, and if there be a choice of routes for his shipments, as is frequently the case, he may make this choice intelligently, or he can see whether, in any respect, they are such that he may feel it his duty to make complaint against them. But in addition to this information, which is thus valuable and important to the shipper and the public, there could be no efficient supervision and regulation of rates and of the methods prevailing in their enforcement unless tariffs were filed with the Commission as provided by the statute.

The previous provisions of the statute on this subject had been highly valuable, but these were greatly strengthened by the subsequent amendments of March 2, 1889. Under the operation of the statute as thus amended rates have been more steady than before. The temptation to preferences by sudden cuts for the benefit of some dealers and at the expense of others, and resulting as a preference in the transportation of certain kinds of traffic over other traffic, has been very greatly restrained. The posting of rates has been more clearly provided for, so that complaints on the part of shippers that they are unable to see these rates at depots

have virtually ceased to exist. Prior to the adoption of the amendments of March 2, 1889, this was a fruitful source of complaint.

The Commission has rigidly enforced that provision of the statute found in one of these amendments in reference to notice on the part of carriers to the Commission of advances and reductions in rates, and finds that it has worked well. To the force of the statute as thus amended is unquestionably due, in a considerable measure, the decrease that has occurred in the reckless and wasteful rate wars among the carriers, resulting, as they inevitably do, in ruining the business of some honest dealers, building up the business of dishonest dealers, squandering the property of shareholders, and then endeavoring to re-coup the loss sustained by their folly in subsequently charging the general public higher rates than before.

The system by which the tariffs of each company are filed separately in the office of the Commission, and a careful index of them kept so that they are of easy access or reference, has been greatly extended, and it is but the work of a moment to produce them for any necessary purpose, and to ascertain what the rates are from any point in the country to any other point. These tariffs are in many instances voluminous, and their number is enormous. The number of tariffs received and filed during the year ending December 1, 1889, was 180,000. The changes in them are numerous and frequent, and it requires a large force to handle them. The regulation and supervision contemplated by the statute can never efficiently be made until the Commission is in a position to know promptly whether or not these tariffs, as filed, show on their face that they seem to comply with the law; and this is equally true of all proposed advances and reductions. To enable the Commission to perform this duty in the manner required by the statute, renders it necessary that the clerical force should be such that these tariffs, and all changes in them, can be promptly filed and indexed without any delay, and that the Commission may be able to see at once the nature and effect of proposed changes.

RAILWAY METHODS IN SHIPMENTS OF FREIGHT AND THE RECORDS
THEY KEEP OF THESE TRANSACTIONS.

Other instances of investigations made by the Commission under the twelfth section of the Act to regulate commerce have been referred to in this report, but in addition to these the Commission has investigated the business methods of railways in shipments of freight and the records they keep of these transactions with a view of ascertaining what they are and what changes, if any, have been made by carriers under the operation of the statute. Under an order of the Commission made on the 24th day of August, 1889, this investigation was made by Mr. C. C. McCain, auditor of rates and transportation in the office of the Commission. His report will be found in Appendix 5 of this report. His report shows the business methods and the records kept by carriers of their business transactions in shipments of freight. These methods and records are substantially much the same as those in existence prior to the enactment of the Act to regulate commerce, though continual improvements are being made in such matters by the carriers, and this will continue to be the case as practical experience will demonstrate its necessity in handling and moving the commerce of the country.

PRINTING AND DISTRIBUTION OF REPORTS, DECISIONS, AND OTHER
DOCUMENTS.

Section 14 of the Act to regulate commerce (as amended) contains provisions as follows :

“ All reports of investigations made by the Commission shall be entered of record, and a copy thereof shall be furnished to the party who may have complained, and to any common carrier that may have been complained of.

“ The Commission may provide for the publication of its reports and decisions in such form and manner as may be best adapted for public information and use. . . . The Commission may also cause to be published for early distribution its annual reports.”

The action of the Commission has been in compliance with these provisions.

Copies of reports of investigations have been distributed to those who applied for the same and to others to whom they would be of interest and service, in the opinion of the

Commission, including Senators and members of Congress, attorneys having matters before the Commission, boards of trade, railway journals and newspapers, State railroad commissioners, and others.

Soon after the Commission was organized arrangements were made for the publication of reports and decisions of causes and investigations heard by the Commission, corresponding in form and style to the decisions of judicial tribunals. The material for these reports has been furnished to two publishing companies, and volumes have been issued on their own responsibility containing the reports and decisions of the Commission to March 25, 1889. The reports and decisions since that date will appear in forthcoming volumes, which will be issued in due course, as the material therefor accumulates. The Commission authorized the purchase of sufficient copies of these reports as issued for its own use and distribution to the President and his Cabinet, judges of Federal courts, national, state, college, bar, and some other public libraries, both American and foreign, to railroad commissioners, and some other officials.

Section 21 of the Act to regulate commerce was amended March 2, 1889, so as to read as follows:

“ That the Commission, shall, on or before the first day of December in each year, make a report, which shall be transmitted to Congress, and copies of which shall be distributed as are the other reports transmitted to Congress.”

Under the provision first above cited an edition of the second annual report was printed and distributed as follows:

To the President and to Senators and Representatives in Congress; judges of the United States courts; district-attorneys of the United States; to boards of trade, chambers of commerce, and commercial exchanges of the United States; public library associations; universities and other educational institutions; parties and counsel in cases before the Commission; to leading newspapers of the country; railway and labor journals; law publications and financial papers; to granges and agricultural societies; to the directors and other officers of railways in the United States; to the Exec-

utive Departments of the Government; to State railroad commissioners, and to foreign governments.

Of the proceedings of the general conference of railroad commissioners, the purpose and nature of which are elsewhere alluded to in this report, there were published some 3,000 copies, which were sent to the State railroad commissioners; to the principal officers of railway companies of the country, including the accounting and auditing officers, as the proceedings related in a measure to the methods adopted by the railroads in keeping their accounts and to the making of financial reports to the Commission, in accordance with section 20 of the Act to regulate commerce.

Early in 1889 the Commission caused to be prepared and published an edition of 10,000 copies of the first statistical report, entitled "Statistics of Railways in the United States." This is a volume of 390 pages, prepared under the immediate supervision of the statistician of the Commission, compiled from reports of railway companies pursuant to the provisions of section 20 of the Act to regulate commerce.

This report, which is further alluded to elsewhere herein, was distributed as follows:

The public libraries of the country, newspapers, railway journals, boards of trade, the principal officers of railroads; to the Executive Departments of the Government, United States Senators and Representatives, judges of United States courts, agricultural societies, State railroad commissioners and other officials, and to many others who have applied for copies.

The above distribution of reports and proceedings of the Commission was made with the purpose of carrying out the evident intention of Congress in this behalf as indicated in the provisions of the Act to regulate commerce, and manifestly has been of great value in familiarizing carriers subject to the Act and shippers and the public generally with the law and the principles of justice and fair dealing which it intended should be applied to transportation.

Circulars and other documents have been sent out as follows:

Circular of January 31, inviting a general conference of railroad commissioners.

Circular of March 23, relating to amendment of the Act.

Circular of April 1, relating to automatic car couplers.

Circular of April 10, relating to telegraph.

Circular of May 17, relating to Federal regulation of safety appliances.

Two circulars of June 17, relating to free cartage and trackage facilities.

Two circulars of August 1, relating to relations between railway corporations and their employees.

Act to regulate commerce as amended.

Amended and revised rules of practice.

Reports and opinions in cases before the Commission.

The total number of reports and other documents distributed during the year is over 90,000 copies.

STATISTICAL WORK OF THE COMMISSION.

The statistical work of the Commission for the year ending June 30, 1888, is fully explained in the report of Statistician Adams, which was published by the Commission some months since. In that report the statistician says of the information called for from the railroad companies that it may be classified under four general heads: First, questions are asked respecting the corporate history of the several roads and their organization for purposes of operation; second, returns are required bearing on the financial standing of railway corporations, whether they be operating or subsidiary corporations; third, what may be termed "statistics of operation" are demanded; fourth, statistics pertaining to the physical characteristics of roads are made the subject of inquiry. The object of the inquiry thus indicated may be easily perceived. The railway problem is one that presents itself in many phases, but at the present time there are two questions of more importance than all others. The first of these pertains to fair, uniform, and steady rates between the railways and the public for service rendered, the second, to the number and situation of new lines that can be economically constructed.

For neither of these questions is there as yet any absolute answer. General principles, it is true, may be laid down, but

in the application of those principles accurate and detailed knowledge of conditions is essential, and the nature of the knowledge required is, as will be readily admitted, such as may be gained by the questions outlined in the form which is sent out for the annual corporate returns. The report shows in detail how far the call has been successful in obtaining the information desired, and explains some of the difficulties in the way of making it complete and accurate. The chief of these relate to the cost and value of railroad property, franchises, and equipment, and the statistician says that for reasons which he gives there is some plausible ground for saying that satisfactory and conclusive information respecting the cost of railways in the United States cannot be obtained. The chief difficulty in the way arises from the fact that reliable record evidence upon these points was in many cases never made and in some cases, after being made, has been lost or destroyed.

Five tables are appended to the statistician's report. The first table shows the length of line owned by each railroad company, the length of time operated, and whether operated by the company owning or by some other. In a preliminary report given in the second annual report of the Commission the total railroad mileage of the United States was given at 152,781. Those figures were the result of an estimate based upon publications by private statisticians. This proved to be an over-estimate. The statistician gives as sources of over-estimation in railway mileage the following: Mileage may be easily multiplied in case a line or part of a line is used jointly or owned jointly by two or more operating companies; roadways lying partly out of the country, in Canada or Mexico, may be returned as roadways within the country; lines once operated but abandoned, as lumber roads, quarry roads, etc., may continue to be counted after they have ceased to form part of the country's railway system; street railways, operated in connection with steam railways, may be included in total mileage. A careful sifting of the returns received and of such other evidence as was found available, fixes the total railway mileage in the United States, on June 30, 1888, at 149,901.72. The whole number of corporations

owning railroads is given at 1,488. Of these 795 actually operate roads; the others are called in the report subsidiary roads, their lines being operated by other companies as lessees or otherwise.

Of the aggregate mileage above given 10,799.89 was obtained from what are designated as unofficial sources; in other words, from sources other than returns made to the Commission. For the most part, reports of the State railway commissioners supplied the information. It must be expected that there will always be difficulty in obtaining complete and accurate statistical information, so long as corporations owning lines which are entirely within single States do not recognize an obligation to make returns. It should be said for such corporations that they have in general responded to the call of the Commission, and have claimed no exemption; but in many cases, as will be apparent from the figures given, response has not been obtained.

The second table appended to the report gives the amount of railway capital at the close of the year ending June 30, 1888, under the three heads of stocks, funded debt, and current liabilities. The amount of stocks is given at \$3,864,468.055; of funded debt, \$3,869,216,365; and of current liabilities, \$396,103,311. This makes a total of \$8,129,787,731, being \$59,392 per mile of road. But this is for 136,883.53 miles of line only.

The third table gives a summary of earnings and income for the same number of miles operated. The amount for passenger service is stated at \$277,339,150, which was 30.46 per cent. of the whole; from freight service, \$613,290,679, or 67.35 per cent. of the whole; other earnings, \$19,991,391, or 2.19 per cent. of the whole. The total earnings from operation were \$910,621,220. The income from other sources, excluding credits sold, was \$89,506,471, making total income for the year \$1,000,214,691.

In a fourth table is given a summary of expenditures for the year. From this it appears that there was paid for maintenance of way and structures, \$131,447,859; for maintenance of equipment, \$101,659,972; for conducting transportation, \$299,049,713; for general expenses, \$55,601,045; not classi-

fied, \$4,245,067; making total operating expenses \$594,994,-656. For fixed charges there was paid \$285,492,433. Total expenditures, \$880,487,089.

From tables 3 and 4 the following comparative summary of results was deduced:

	Cents.
Revenue per passenger per mile.....	2.349
Average cost of carrying one passenger 1 mile.....	2.042
Revenue per ton of freight per mile.....	1.001
Average cost of carrying 1 ton of freight 1 mile.....	.630
Revenue per train mile, passenger trains.....	1.139
Average cost of running passenger train 1 mile.....	84.691
Revenue per train mile, freight trains.....	1.657
Average cost of running freight train 1 mile.....	1.038
Average cost per train mile of all trains earning revenue...	96.050
Percentage of operating expenses to operating income.....	65.340

The impossibility of thus apportioning revenue and expenses with entire accuracy is well understood, but the above is probably as near an approach to accuracy as is attainable.

A fifth table gives a statement of payments on railway capital for the year, from which it appears that upon \$2,374,-200,906 of stock no dividend was paid, and upon the remainder there was paid as follows: Upon \$4,818,626, less than 1 per cent.; upon \$90,805,607, from 1 to 2 per cent.; upon \$46,775,644, from 2 to 3 per cent.; upon \$34,079,425, from 3 to 4 per cent.; upon \$318,690,245, from 4 to 5 per cent.; upon \$301,681,511, from 5 to 6 per cent.; upon \$264,402,331, from 6 to 7 per cent.; upon \$295,755,706, from 7 to 8 per cent.; upon \$76,473,650, from 8 to 9 per cent.; upon \$4,209,510, from 9 to 10 per cent.; upon \$48,459,100, from 10 to 11 per cent.; and upon \$4,006,800, 11 per cent. or over. Interest payments were made on 78.31 per cent. of the bonds, and none on 21.69 per cent.

The theory of a sixth table, which shall give a cash statement of financial operations for the year, and which may be regarded as the culmination of the plan to which all the other tables conform, is also presented, but it was found not possible to give the table itself in this first report. The abstract above given will be sufficient to show that the statistical work of the Commission has been satisfactorily begun;

that the leading facts are now established with nearer approach to accuracy than ever before; and that there is reason to believe that the obstacles to obtaining reliable statistics regarding railroad property and railroad operations will from this time grow less numerous and troublesome from year to year.

The single-track mileage of new road constructed during the year ending June 30, 1888, by the companies which reported to the Commission, was 7,502.17. If the companies not reporting constructed new road in like proportion, the total would be 8,084.65; and this may be assumed to represent very nearly the actual extension of lines during the year.

One of the chief difficulties in the way of obtaining accurate and reliable statistics of the working of railroads springs from the fact that the methods of keeping accounts vary so greatly. There is no good reason for the great diversity that exists. It has come largely from the different practices of different roads originating many years ago when the general subject was less understood than it is now, and which have continued in existence for no better reason than that the present officers of railway corporations have found them in existence at the time of entering upon their duties. Accounting officers of railroads very generally recognize the importance of uniformity in the methods of accounting, and in their meetings have considered the subject to some extent, and a very general desire is believed to exist that the Commission should act under the authority given to it by the twentieth section of the statute, and prescribe uniformity in the methods of keeping accounts. The subject has recently been taken up by the Commission, and steps have been taken to obtain from the roads such information as may be necessary to enable the power of the Commission in this respect to be wisely and usefully exercised.

The statistical work of the Commission for the year ending June 30, 1889, will appear in detail by the report of the statistician now in course of preparation. This report is unavoidably delayed by the tardiness of some of the railroad companies in making their returns. The new railroad mileage constructed during the year can now be only approx-

imately given and was about 6,500 miles, making the total railroad mileage of the United States to June 30, 1889, 156,400 miles.

It is of much interest to know how the operation of the law has affected the earnings of railroads. There are so many other causes, however, that exert more or less influence that exact conclusions can not be predicated from one cause alone. Full returns are also necessary for accurate and complete results, and as these have not all been received, only incomplete results can now be given. Enough appears, however, by official returns and from unofficial sources, to warrant the positive statement that as a whole there has been considerable increase in railroad earnings, and that during the year since the last report of the Commission every month has shown a marked, though not the same, increase over the corresponding month in the preceding year. The lowest rate of increase upon a given number of roads in any month was nearly $4\frac{1}{2}$ per cent., and the highest was over 12 per cent., being the largest since the extraordinary rate of earnings in the year 1880.

It is to be noted that with the exception, perhaps, of some coal roads, the increased earnings have been shared by the various groups or classes of roads in different portions of the country, and apparently in the following order: The Pacific Slope roads, the Trunk lines, the roads south of the Ohio and Potomac rivers, the Southwestern roads, and in a less degree by those elsewhere.

There seems no reason to believe, therefore, that the effect of the law has been injurious to railroad earnings, but on the contrary that, notwithstanding the general lowering of rates from all causes, and the equalizations and reductions of charges due especially to the just provisions of the law, railroads in the main have prospered with the general prosperity of the country, and show materially better earnings wherever excessive competition and the misconduct of managers in rate-cutting and other reprehensible practices have not inflicted injury on themselves.

THE GOVERNMENT-AIDED RAILROAD AND TELEGRAPH LINES.

Certain duties were devolved upon this Commission in relation to railroad and telegraph companies to which the United States has granted any subsidy in lands or bonds or loan of credit for the construction of either railroad or telegraph lines, by the Act of Congress approved August 7, 1888, being chapter 772 of the acts of the Fiftieth Congress of the United States, Volume 25, U. S. Statutes at Large, page 382. The Act also imposes certain specified duties upon the railroad and telegraph lines referred to.

So far as this Commission is required to take action in respect to these companies and to secure the reports and information pursuant to the Act, the Commission has endeavored to give effect to its provisions.

The general purposes of the Act may be summarized as follows:

First, that every railroad and telegraph company aided by any subsidy from the United States in lands or bonds or loan of credit for the construction of either railroad or telegraph lines, and all companies engaged in operating such railroad or telegraph lines should forthwith and henceforward, by and through their own respective corporate officers and employees, maintain and operate for railroad, governmental, commercial, and all other purposes, telegraph lines, and exercise by themselves alone all the telegraph franchises conferred upon them and obligations assumed by them under the acts making the grants of Government aid.

Second, that any telegraph company that may have accepted the provisions of title 65 of the Revised Statutes of the United States, which shall extend its line to any station or office of a telegraph line belonging to any railroad or telegraph companies referred to in the Act, should have the right to connect its line and exchange business with such Government-aided companies.

Third, that the railroad and telegraph companies referred to in the Act should file with this Commission copies of all contracts and agreements between it and every other person or corporation in reference to the ownership, possession,

maintenance, control, use, or operation of any telegraph lines or property over or upon its right of way, and also to make a report describing with sufficient certainty the telegraph lines and property belonging to it, and the manner in which the same are being then used and operated by it, and the telegraph lines and property upon its right of way in which any other person or corporation claims to have a title or interest, and setting forth the grounds of such claim and the manner in which the same are being then used and operated.

Fourth, that the said companies should also make annual report to this Commission, with reasonable fullness and certainty, the nature, extent, value and condition of the telegraph lines and property belonging to them, the gross earnings, and all expenses of maintenance, use and operation thereof, and their relation and business with all connecting telegraph companies during the preceding year, at such time and in such manner as may be required by a system of reports to be prescribed by this Commission.

Prior to the passage of the Act of August 7, 1888, it is believed that the various railroad companies that had been aided by the United States by subsidies for the construction of their railroad and telegraph lines, and that were required to construct, maintain, and operate telegraph lines, had availed themselves of the provisions of the nineteenth section of the Act of Congress of July 1, 1862, in regard to Pacific railroads, by which such railroads were authorized to enter into arrangements with certain specified telegraph companies in lieu of constructing telegraph lines of their own, and by which it was enacted that:—

“ If said arrangement be entered into, and the transfer of said telegraph line be made in accordance therewith to the line of said railroad and branches, such transfer shall, for all purposes of this Act, be held and considered a fulfillment on the part of said railroad companies of the provisions of this Act in regard to the construction of the said line of telegraph. And in case of disagreement, said telegraph companies are authorized to remove their line of telegraph along and upon the line of railroad herein contemplated, without prejudice to the rights of said railroad companies named herein.”

The Commission believes that the telegraph business of

the subsidized railroad companies in question was provided for by arrangements under this section, and was in fact done by the Western Union Telegraph Company, either under direct contracts with that company or as successor in interest to the other telegraph company specified in the Act, with which contracts were originally made. These contracts also contain provisions as to telegraph business other than that of the railroad companies, but not necessary to be re-stated herein.

None of the railroad companies or telegraph companies referred to in the Act of August 7, 1888, made report to this Commission within sixty days from the passage of the Act, as required by its sixth section. The Commission thereupon called upon the various companies, by circular, to file with the Commission copies of the contracts and agreements specified in the sixth section, and to report certain other facts set forth in the circular. This circular, published in appendix of second annual report, was duly served upon the various companies believed to be subject to the Act.

The only responses to this circular were as follows:

The Northern Pacific Railroad Company filed a copy of agreement between the Northwestern Telegraph Company and the Western Union Telegraph Company of the one part and the Northern Pacific Railroad Company of the other part, under date of May 1, 1880; and also of a supplemental agreement to the foregoing between the same parties under date of December 18, 1885; also a brief report in regard to the ownership and operation of the telegraph lines and property upon the right of way of said company.

The Southern Pacific Company filed a contract entered into between the Central Pacific Railroad Company, the Southern Pacific Railroad Company, the Sacramento & Placerville Railroad Company, the Northern Railway Company, the San Pablo & Tulare Railroad Company, the Los Angeles & San Diego Railroad Company, the Amador Branch Railroad Company, the Berkeley Branch Railroad Company, the Los Angeles & Independence Railroad Company, parties of the first part, and the Western Union Telegraph Company, party of the second part, under date of December 14, 1877.

The Sioux City & Pacific Railroad Company filed a copy of a contract entered into between said company and the Western Union Telegraph Company under date of April 1, 1871; also a brief report in regard to the ownership and operation of the telegraph lines and property upon its right of way.

The Union Pacific Railway Company filed a copy of a contract entered into between said company and the Western Union Telegraph Company under date of July 1, 1881.

The companies not having complied with the requirements of the circular as fully as was necessary, the Commission, on the 10th of April, 1889, issued another circular, which was duly served upon the various companies, calling upon them for more complete and specific reports, which circular is given in appendix 6.

Responses to this last circular have been as follows:

The Union Pacific Railway Company filed a report in regard to the ownership and operation of the telegraph lines and property upon its right of way; also a statement showing the pleadings and certain proceedings in a suit pending in the circuit court of the United States for the district of Nebraska, brought by the Western Union Telegraph Company against the Union Pacific Railway Company.

The United States Telegraph Company and the Western Union Telegraph Company communicated by letter, denying that said companies are subject to the Act of August 7, 1888.

The Sioux City & Pacific Railroad Company filed a report giving a brief description of its telegraph line.

The Northern Pacific Railroad Company filed a report giving a full and detailed account of the ownership and operation of the telegraph lines and property upon its right of way.

The St. Joseph & Grand Island Railroad Company (successor of the St. Joseph & Western Railroad Company) filed a report in regard to the ownership and operation of the telegraph lines and property upon its right of way.

The responses of the United States Telegraph Company, the Western Union Telegraph Company, the Texas & Pacific Railway Company, the Missouri Pacific Railway Company,

the Hannibal & St. Joseph Railroad Company consisted only of letters respectively denying that the said companies are subject to the Act. The Atchison, Topeka & Santa Fe Railroad Company also answered, denying that that company is subject to the Act, but filed a copy of an agreement between said company and the Western Union Telegraph Company.

Pursuant to the provisions of the sixth section of the Act of August 7, 1888, the Commission prepared a form, as set forth in Appendix 6-a, for annual reports to be made by the railroad and telegraph companies referred to in the Act, setting forth with reasonable certainty and particularity the various matters required to be shown by those reports; and on the 22d day of August last these blank forms were duly transmitted and delivered to the following companies:

The Atchison, Topeka & Santa Fe Railroad Company, the Atlantic & Pacific Railroad Company, the Central Pacific Railroad Company, the Northern Pacific Railroad Company, the Oregon & California Railroad Company, the St. Joseph & Grand Island Railroad Company, the St. Louis & San Francisco Railroad Company, the Sioux City & Pacific Railroad Company, the Southern Pacific Company, the Union Pacific Railway Company, the United States Telegraph Company, and the Western Union Telegraph Company.

The various railroad companies to which blanks were so transmitted are believed to be subject to the provisions of the Act of August 7, 1888, either by reason of subsidies directly granted to them by the United States Government or by the acquisition of or consolidation with lines of road to which such subsidies have been granted.

The Western Union Telegraph Company is believed to be subject to the Act, not by reason of any direct subsidy granted to that company, but by reason of the acquisition by contract of the franchises and rights of other companies that had received Government subsidy, whereby the former became subject to the obligations of such companies.

The United States Telegraph Company is believed to have been a subsidized company, but, although its corporate existence is still maintained, its franchises are controlled

and its lines operated by the Western Union Telegraph Company.

The Central Pacific Railroad and the Oregon & California Railroad are controlled and operated by the Southern Pacific Company.

The only railroad companies that have yet made an annual report to the Commission, pursuant to the forms transmitted, are, first, the Sioux City & Pacific Railroad Company. The report of this company is imperfect and gives only a small part of the information called for by the circular. The main facts called for are not reported at all, but the report states in a general way that its telegraph line is not operated by the railroad company for commercial business, but is operated by the Western Union Telegraph Company; and also states that the entire capital stock of the railroad company is issued on account of all the property of the company, and that a division to show the cost and value of the telegraph property can not be made; second, the Northern Pacific Railroad Company, whose report seems to be as full as practicable, in view of the fact of its contract with the Western Union Telegraph Company.

The general result to be reported by the Commission is that all of the subsidized railroad companies referred to in the Act have failed to comply with the provision of the first section that all of said companies should "forthwith and henceforward, by and through their own respective corporate officers and employees, maintain and operate for railroad, governmental, commercial, and all other purposes, telegraph lines, and exercise by themselves alone all the telegraph franchises conferred upon them and obligations assumed by them under the acts making the grants;" and all except the two companies above specified have failed to comply at all, and those two literally, with the provision of the sixth section requiring said companies to make annual reports to the Interstate Commerce Commission, setting forth "with reasonable fullness and certainty the nature extent, value, and condition of the telegraph lines and property then belonging to it, the gross earnings, and all expenses of maintenance, use, and operation thereof, and its relation and business with all connecting

telegraph companies during the preceding year, at such time and in such manner as may be required by a system of reports which said Commission shall prescribe."

It is proper to state that the Union Pacific Railway Company reports to this Commission that immediately after the passage of the Act of August 7, 1888, it attempted to assume direct control over its telegraph line, and to comply with the provisions of the Act, but was prevented from so doing by an injunction granted by the United States circuit court at the suit of the Western Union Telegraph Company, which suit is still pending.

The said Act of August 7, 1888, is precise in its provisions that subsidized railroad companies shall "maintain and operate for railroad, governmental, commercial, and all other purposes, telegraph lines," and shall afford facilities to connecting telegraph lines "for the prompt and convenient interchange of telegraph business," . . . "and afford equal facilities to all without discrimination in favor of or against any person, company, or corporation whatever, and shall receive, deliver, and exchange business with connecting telegraph lines on equal terms and without discrimination."

This Commission has never received an application to institute an investigation or make an order upon any railroad or telegraph company under the provisions of said Act, and no complaint has come to the Commission on account of refusal of the Western Union Telegraph Company or any other subsidized company to connect with other companies in the reception or transmission of messages, except a communication in the nature of a complaint from Albert B. Chandler, president and general manager of the Postal Telegraph and Cable Company, in September, 1888. This led to a correspondence and inquiry which continued for some months, but no formal complaint or application followed.

It is also provided by the Act last referred to, that in case any of the said railroad or telegraph companies shall refuse or fail to make the reports mentioned in the sixth section of the Act, or any report that may be called for by the Interstate Commerce Commission, it shall be the duty of the said

Commission to inform the Attorney-General of such cases of neglect or refusal.

Pursuant to this provision of the Act the Interstate Commerce Commission, after waiting what seemed to be a reasonable time for the reports specified in the circulars above mentioned, reported to that officer the facts in respect to such neglect and refusal by said companies; and the Commission is informed that he has taken action in this behalf.

CONFERENCE OF RAILROAD COMMISSIONERS.

Early in the present year the Commission decided to invite a conference with the authorities intrusted with the supervision of railroad affairs under the laws of the several States and Territories. Many reasons had weight in inclining the Commission to take this action, some of which appeared to its members to be very cogent. The United States, by the Act to regulate commerce, had entered upon the regulation of transportation by rail, but in doing so had made the descriptive terms as to the carriers to which the regulations should apply so precise and particular as to leave a considerable number unaffected. The Act by its first section was declared to "apply to any common carrier or carriers engaged in the transportation of passengers or property wholly by railroad or partly by railroad and partly by water when both are used, under a common control, management, or arrangement for a continuous carriage or shipment from one State or Territory of the United States, or the District of Columbia, to any other State or Territory of the United States, or the District of Columbia, or from any place in the United States to an adjacent foreign country, or from any place in the United States through a foreign country to any other place in the United States, and also to the transportation in like manner of property shipped from any place in the United States to a foreign country and carried from such place to a port of trans-shipment, or shipped from a foreign country to any place in the United States and carried to such place from a port of entry either in the United States or an adjacent foreign country"; but an important proviso was added,

“that the provisions of this Act shall not apply to the transportation of passengers or property, or to the receiving, delivering, storage, or handling of property wholly within one State, and not shipped to or from a foreign country from or to any State or Territory as aforesaid.”

Many railroad corporations, whose lines are wholly within single States and who manage them independently, are supposed by the force of this proviso to be altogether exempt from the provisions of the Act, and to be left for regulation—if regulated at all by public authority—under State or Territorial laws. Some of the carriers who may thus plausibly claim exemption owned roads which were not only important because of the very considerable capital invested and of the magnitude of business done upon them, but also because, whether operated independently or otherwise, their relation to interstate roads and to the traffic upon them was such as to make it imperative that they should be taken into account in any comprehensive survey of interstate transportation. Moreover, in the nature of things, it was impossible to classify state and interstate roads upon any distinction that was at once obvious and permanent; neither physical characteristics nor location, nor indications afforded by the mere appearance of the traffic, furnished a conclusive test for the purpose; they did not in any way stand apart from each other so as obviously to constitute separate systems. Then a road might be a State road one year, and without any change except such as should be made in traffic arrangements, be an interstate road the second year, and a state road again the third year; and in any attempt to give comparative views from year to year this likelihood of changes from one class to another was a fact that was necessarily embarrassing since it was easy to see that it was liable to cause confusion and perhaps lead to serious errors.

The consequent difficulties were increased by the fact that State laws for the regulation of State carriers differed from the Act to regulate commerce in important particulars. This, of itself, would be unfortunate, even if it caused no embarrassment in the performance of duties by Federal and State roads. It was obviously desirable that the duties and obli-

gations imposed upon all the carriers should be substantially alike, and that the laws for regulation should, as nearly as possible, be identical. The embarrassment resulting from diversity in State and Federal action was, perhaps, greatest in respect to the matter of statistics. To make these of value it was essential that they be complete and accurate; and they could not be complete and accurate unless the returns made annually by the carriers were all made in response to the same questions and covered the same grounds. If all the carriers by rail made returns to this Commission, the end desired might be expected to be accomplished; but if some of them claimed exemption by reason of being State roads, the effort to obtain full statistics would fail, unless returns under State laws could be resorted to for supplying deficiencies. Many of the carriers did, in fact, claim such exemption, but responded to the call of the Commission as matter of courtesy.

It was found, however, in some cases that, though a willingness to make return existed, it was impracticable to do so, for the reason that the books and accounts, which had been planned and kept with a view to meeting the requirements of State law and State regulation, would not enable the carrier to meet the call made by this Commission, except at great expense. This was most noticeably the case when the financial year covered by the return made to the State was different from the financial year to be embraced in the return to this Commission; under such circumstances one return could not be a mere copy of the other, but would require a special sifting and a new arrangement of accounts, and this would involve an expense which the carrier could hardly be expected to incur as matter of courtesy merely. The impracticability of obtaining complete statistics of the railroads of the country and of their financial and other operations when their returns were not all made on the same basis was as manifest as it was embarrassing.* To take as an illustration the important fact of current railroad building, which, perhaps, interests the general public quite as much as any other; it will be readily understood that it must be quite impossible to give the amount of railroad building for a

specified year when the returns of some of the carriers cover the defined year, while others embrace years differently beginning and ending.

The proposed conference had these matters specially in view, but not these exclusively. The importance of harmony in State and Federal law and regulation, so that for the whole country the rule of conduct in the management of railway transportation should be the same was too great to be overlooked, and the Commission believed that such a conference might be an important step towards the desired end.

On the 31st day of January last the Secretary, by direction of the Commission, issued a circular letter inviting participation in a general conference of railroad commissioners to be held at the office of the Interstate Commission, on the 5th of March following. The letter specified as among the subjects which might be properly considered:—

Railway statistics, with special reference to the formulation of a uniform system of reporting.

Classification of freight, its simplification and unification.

Railway legislation, how to obtain harmony in.

Railway construction, should regulation be provided?

And such other topics affecting State and interstate commerce as should be brought forward by members of the conference, the specification made not being designed to exclude the consideration of any other subjects of common interest. It was stated also that an opportunity would be afforded for consultation in respect to the heating and lighting of cars, automatic car coupling, continuous train brakes, and other matters now more particularly within the sphere of State authority. And papers were invited from members of the conference upon any topic deemed of importance.

The invitation was sent to the railroad commissioners of the several States and Territories having commissions; to the board of tax assessors of Arkansas, Indiana, and New Jersey; to the secretary of internal affairs of Pennsylvania; to the secretaries of State of North Carolina and West Virginia, and to the governors of such States and Territories as have not by law given a supervision of railway affairs to commissions or other public boards or functionaries. The

Association of Railway Accounting Officers was also invited to send representatives, their presence and assistance being specially desired when the subject of annual returns and the forms for securing them should be under discussion. In the invitation to the association it was stated that it has been the constant desire of the Commission to obtain the utmost harmony of action in respect to the subject of railway statistics, and also to avail itself, as far as possible, of the intelligence and experience of practical railway accountants.

On the day appointed for the meeting it was found that the invitation had been very generally accepted. Nearly every State and Territorial railroad commission was represented, as was also the department of internal affairs of Pennsylvania; the American Railway Accounting Officers by its president and other officials. In an address of welcome on behalf of the Interstate Commerce Commission, made on calling the meeting to order, the reasons for the conference and the subjects to be considered were thus stated by the Chairman:—

It gives me great pleasure, on behalf of the Commission of which I am a member, to welcome you to this place. We are all engaged in kindred work, and not kindred work merely, but in a large degree in the same work. You have your respective spheres of action, limited in territory and by legislation, and we have ours, which is intended to be as nearly as in the nature of things is possible, distinct and separate. But if the Union of which we are all citizens is, in a political sense, one and indissoluble, it is even more distinctly so in respect to the great interests which are committed for regulation to your respective Commissions. What is often spoken of as the railroad system of the United States is an illustration of unity in diversity such as it would be difficult to find elsewhere in the world. Every railroad corporation is in a legal sense independent of all others, and when its line is wholly within the limits of a single State, and it is operated independently, the laws make no provision for any other than local regulation. But there is scarcely a line of road in the country so short or so insignificant that the method in which its operations shall be conducted is not of something more than local importance or the character of its regulation of some concern to business interests beyond the State limits. It may be a link in a long line, extending through two or more States; it may be the principal, or, perhaps, the sole means of transportation for the products of a mine or other important industry which supplies many States; but whether of greater or less importance, it has relations to other roads which are not and can not be wholly limited within any political division of the country however extensive it may be. Even the little Catskill Mountain railroad,

by the issue of coupon tickets to San Francisco, may in a sense become a part of a trans-continental highway; and the citizen from the Pacific coast who applies for one of the tickets has an interest in the treatment he shall receive in respect to it which is precisely the same that it would be if all the roads of the country were one in ownership and in management.

I mention these things for the purpose of emphasizing the fact which is constantly before us in all of our work, that in respect to all the railroad interests of the country—to the lines that you regulate and to the lines that come more particularly under our own supervision—it is of the highest importance that there should be harmony in the legislation of control, so that this system can be controlled as nearly as possible—as nearly as the local conditions of the country will enable it to be controlled—harmoniously and as a unit.

There are two matters of particular importance that it seemed to us it would be desirable that we be enabled to confer with you. One is the matter of statistics. We are giving a great deal of prominence to the railroad statistics of the country; we are endeavoring to make them as complete as possible. In order that they shall be made complete it is necessary that we should have your co-operation. I shall not pause to enlarge upon this at this time, because when you shall have become organized and the proper opportunity can be afforded our statistician will appear before you and will present some points for your consideration connected with this general subject, and I think you will be satisfied when you shall have heard the paper he will present—if you are not satisfied already—that it is of the utmost importance that we should be moving upon the same lines in respect to the railroad statistics of the country; that our respective methods for collecting the statistics should look to the like results; that the legislation in respect to them should be as nearly as possible identical, or at least be harmonious; and that we should make sure when we use the same terms in gathering statistics—terms, for example, like “through freight,” “way freight,” and others, many illustrations of which I might give—that we are using them in the same sense, so that when we gather the statistics and place them before the public they should represent actual facts, be reliable, and therefore have value.

Another matter which it has seemed to us we ought to have some conference about, is the subject of uniform classification. You have all felt, I have no doubt, the annoyance we feel constantly growing out of the complaints that have their origin in the diversity of classification which prevails in different sections of the country. Now, those complaints ought to have their foundation removed as nearly as is possible without injury to business interests. The problem of doing this is a difficult one; so difficult that it is not uncommon that the most experienced railroad men in the country, when spoken to upon the subject, say at once, “A uniform classification is entirely out of the question; it

is absolutely impossible." Now, we do not feel that it is so. Our impression has been that the uniform classification was something that in time the country must have; that it was something not to be forced, something that could not be brought about at once, but something that if the several railroad commissions of the country would co-operate in, could gradually, somewhat slowly, but gradually and by steady movement, be at length accomplished; and that when it was accomplished, although inevitably some evils must attend the great change from what now exist to general uniformity, yet after all the general interests of the country would thereby be benefited.

In the circular we sent out calling this meeting we have given special prominence to these two topics, but without any purpose of limiting in any way such action as you may see fit to take here. The meeting, when it is organized, will, of course, be in your hands. We desire to meet with you as listeners, as learners. Many of you have been in this work very much longer than we have, and probably there is not one of you but has some experience that will be valuable to us if placed before us. And we desire that you should understand at the outset, that while ready and willing to co-operate in your conference to any extent that may seem desirable, our attitude on the whole will be that of learners rather than of participants.

The conference was organized by appointment of officers, and remained in session for three days. The first subject considered was that of uniform railway statistics.

UNIFORM RAILWAY STATISTICS.

Upon that subject the statistician to the Interstate Commerce Commission read a carefully prepared paper, which is given in an appendix to his first annual report to the Commission, and for that reason is not reproduced here. The paper had for its object to show the great importance of uniformity in railway statistics, the difficulty of procuring them, the inaccuracies resulting from the existing methods of making corporate reports, the remedies that may be available for preventing these in the future, and the absolute necessity for harmony in State and Federal action in regard to corporate returns, if trustworthy results were to be looked for.

The general subject was very fully discussed by members of the conference. A diagram was exhibited, which showed the diversities in the laws or official regulations of the various States and Territories in respect to the time for making

railway returns, and also as to the information called for. It was also shown how far the State and Territorial requirements differed from those made by the Interstate Commerce Commission in the form for a return which it had prescribed. After discussion the following was adopted without dissent:

Resolved, That it is the sense of this convention that a uniform method of collecting and publishing statistics, both as to time and matter, should be adopted.

The conference then proceeded to consider the form for a return then in use by the Interstate Commerce Commission, and went very carefully and critically over it with a view to seeing whether by modification thereof in any particular it would be made more completely to answer the purposes for which it is sent out. In most particulars the form was approved as satisfactory. Some few changes were recommended, and with these made it was generally agreed that the form would not only be suitable for all the purposes of gathering statistics for the use of this Commission, but would be equally adapted to the work of the State commissions, and might well be made use of in substitution for existing State forms. In some States, however, express provisions of law regarding corporate reports would render modifications essential. The chief impediment to the adoption of the form in all of the States was found in the fact that they do not all name the same period for the close of the operating year to be covered by the return that has been fixed upon by the Commission. The Commission has named for that purpose the 30th of June. Ten States name the same day, others name different days. The desirability of uniformity in this regard was manifest, and wherever amendment to State laws was necessary to accomplish it, it was understood that such amendment would be advised.

The modifications in the form which were advised by the conference, the members of the Interstate Commerce Commission at once gave assent to, and they were made in the form, which was sent out for returns for the current year. There is every reason to expect, therefore, that hereafter the work of this and of the State commissions in the collection of statistics will be in general harmony, and that when any

impediments that may exist in State laws are removed, the forms made use of for returns will be identical.

The conference also considered the subject of

UNIFORM CLASSIFICATION OF FREIGHTS.

This was acknowledged on all hands to be a subject of great importance, but also of great difficulty. The annoyances which were constantly resulting from the use of different classifications were well understood, but it was also understood that unification must to a considerable extent affect relative rates, and that to force it would necessarily be damaging to business interests in many sections. The result of the discussion was the unanimous adoption of the following conservative resolution:—

Resolved, That we believe that still further advance toward uniform classification of freights will promote the welfare and convenience of shippers, and of the railroad companies, and we commend a conservative but persistent effort to that end.

The subject of

RAILWAY LEGISLATION, HOW TO OBTAIN HARMONY IN, was taken up and discussed, and so far as opinions were expressed it seemed to be the unanimous opinion of those present that there was great desirability in having the State laws brought into conformity with the Federal law wherever that had not already been done. A committee consisting of George G. Crocker, of Massachusetts; O. P. Mason, of Nebraska; Henry R. Shorter, of Alabama; Samuel E. Pingree, of Vermont; and John T. Rich, of Michigan, was appointed upon this subject, with the understanding that it should report at a future conference.

Among other subjects considered was that of

SAFETY APPLIANCES IN RAILWAY TRANSPORTATION,

and the discussion resulted in the unanimous adoption of the following:

Whereas thousands of railroad employees every year are killed in coupling or uncoupling freight cars used in interstate traffic and in

handling the brakes of such cars, and most of these accidents can be avoided by the use of uniform automatic couplers and train brakes; and

Whereas, the success and growth of the system of heating cars by steam from the locomotive or other single source largely depends on the adoption in interstate traffic of an uniform steam coupler; and

Whereas, these subjects are believed to be of pressing importance, and within the proper scope of the powers of the Congress of the United States, while attempts on the part of the individual States to deal with them have resulted, and must continue to result, in conflicting regulations;

Resolved, That we do respectfully and earnestly urge the Interstate Commerce Commission to consider what can be done to prevent the loss of life and limb in coupling and uncoupling freight cars used in interstate commerce and in handling the brakes of such cars, and in what way the growth of the system of heating passenger cars from the locomotive or other single source can be promoted, to the end that said Commission may make recommendation in the premises to the various railroads within its jurisdiction, and make such suggestions as to legislation on said subject as may seem to it necessary or expedient.

Whereas, it has been represented to this convention that the problem of an automatic electric safety signal has been solved; and

Whereas, if said representation be true, said matter is of great moment to the traveling public:

Resolved, That we invite the attention of the Interstate Commerce Commission to said subject, and if, in its judgment, the inventions in relation to such signals are as represented, said Commission be requested to make such recommendations to the railroads and such suggestions as to legislation on said subject as may seem proper and necessary.

The resolution was adopted by a unanimous vote.

The subject of these resolutions is considered in another part of this report.

FUTURE CONFERENCES.

The interest in the discussions of the conference was continuous throughout, and at the conclusion it was felt that the meeting had been of great value and could not fail to have a strong tendency towards unity and harmony in the legislation and other public action for the regulation of transportation by rail. It was therefore deemed wise to follow up so promising a beginning by making provisions for future meetings, and this was done in the adoption of the following:

Resolved, That it is the opinion of the members of this convention

that provision should be made for annual conventions of the railroad commissioners of the several States and the Interstate Commerce Commission, to be held at such place as may be agreed upon, with a view of perfecting uniform legislation and regulation concerning the supervision of railroads.

The chairman of the Interstate Commerce Commission and Messrs. George M. Woodruff, of Connecticut; Frank T. Campbell, of Iowa; and John M. Mitchell, of New Hampshire, were chosen a committee to call the next convention.

ENFORCEMENT OF THE FOURTH SECTION OF THE STATUTE.

The general rule indicated by the fourth section of the Act to regulate commerce, usually known as the "long and short-haul" clause, at the outstart of its administration engaged the serious consideration of the Commission. Its importance and value to the public, as well as to the transportation interests of the country, were manifest. A few exceptions, such as were evidently contemplated by its provisions were then recognized and announced by the Commission. The practical experience of considerably more than two years has not demonstrated the necessity of adding to these exceptions. The justice of the principle involved in the general rule has never admitted of serious question; the justice of the principles upon which the exceptions are based is equally apparent.

The temptation of carriers to add to the exceptions arising from competition in business, from the pressure brought to bear upon them by particular localities, and by the importunities and devices of large dealers, is, of course, one that, in the nature of things, is ever present; but all the time the steady power of the law has been doing its work, and this is seen in the gratifying progress that has been made by the carriers in the direction of compliance with the provisions of this section of the statute.

It was not to be expected that compliance with the requirements of this section could be accomplished without a very great change of methods existing previously to and at the time of the enactment of the statute, involving changes of

rates at various points, loss of earnings at some of these points, and increased earnings at others, the extent of which, as a matter of estimate in advance, was in each instance problematical and involved in much uncertainty. The localities in which the greatest difficulty has been found in the application of the general rule have been in the territory of the trans-continental lines and the States south of the Potomac and Ohio rivers, and States also south of Kansas and Missouri. The causes of this have heretofore been reported and discussed in our previous annual reports. Briefly stated, in the case of the trans-continental lines, it has been to some extent the actual and apprehended competition of the Canadian lines and of water competition, and also to the fact that in the intermediate portion of the long haul between the Pacific coast and the Mississippi and Missouri rivers there are large portions of uninhabited country, with occasional points widely separated, where the traffic is so inconsiderable that it is served at a largely increased cost and expense to the carrier.

In the Southern States it is an extensive coast line, with ports reached by a large number of steamship lines and coasting vessels, and the penetration of the interior by deep navigable rivers to an extent that exists nowhere else in the country, and here the population is more sparse, and the traffic lighter than in the States north of the Potomac and Ohio rivers, and the cost of service at intermediate points correspondingly greater. While it is true that there yet remain many instances in which the existing exceptional difficulties can and must be further overcome by carriers in each of these localities in the direction of a nearer compliance with the fourth section, yet it is also true that since our last annual report very considerable progress has been made by them on this line. The business of localities, no less than of the carriers, is growing to the law, and all this strengthens its operation and administration. Results for the better are, upon the whole, everywhere reached in the transportation rates and methods of carriers.

To those who may suppose that no very good reason can be given why all disparities and inequalities of rates and

methods may not be discovered and corrected as fast as they exist by a tribunal appointed by Congress for that purpose, it may not, perhaps, have occurred that the railroad mileage of the United States, if it could be transposed into that shape, would make six parallel lines of railroad around the earth. Over this net-work of public highways, in extent without parallel, in diversity equal to its extent, and constantly increasing, the vast commerce of the United States is, in one way or another, transported. The competition of carriers and localities contend for it with ceaseless energy. Its transportation is environed by different circumstances and conditions at many points in the wide confines of the Republic. That, growing out of this condition of affairs, inequalities and disparities of rates, for which plausible, but not lawful, reasons on the part of the carriers can always be given, must occasionally occur even where the carriers who make them are animated by the best of motives, and that objectionable methods may in like manner be adopted by them occasionally, is one of the inevitable features of such a situation.

The statute which provides for the regulation of these rates and methods prescribes rules of conduct for the transaction of an amount of business that no other statute has ever done; and if it be true, as is the case, that every other statute which prescribes methods and rules of conduct for the transaction of business, to any considerable extent, has been occasionally violated, thereby furnishing employment to the courts of the country for a large portion of their time, it would seem not to be strange that there are here and there many failures to comply with the provisions of the Act to regulate commerce, that require laborious and patient investigation to correct them. But the feature of the statute that renders the regulation it contemplates practical is that it prescribes plain, general rules, just and fair in themselves, which are for the most part declaratory of the common law, and creates a tribunal before which the voice of the citizen, or of the community or the carrier, may always be heard to challenge rates and methods that involve unjust discrimination, extortion, or unlawful preference in an informal and comparatively inex-

pensive way; and goes further by requiring this tribunal, at all times, as a matter of duty, to keep a watchful supervision over these rates and methods; to which is added the power of the courts.

A case of much interest, arising under this section and illustrating its operation, was recently brought to our attention. It involved the question of relative rates on lumber from two far interior points in the Southern States to the city of Boston. The usual excuse for discrimination, that there was far distant water competition of supposed controlling force, was brought forward by the carrier to justify the lower rate on the longer haul. But in addition to this the carrier attempted to justify the lower rate for the longer haul chiefly on the further ground that in the case of the longer haul the lumber had already paid a local rate from the interior point of origin to a common or competitive point as a market before it was afterwards trans-shipped over the longer haul to Boston, and insisted that this ought to be taken into consideration as part of the lower rate from this competitive point to Boston, and the rates were thus made to equalize them as between these respective localities. The interior point from which shipments were made and which was challenging these rates before the Commission, was neither a common nor a competitive point, but it was several hundred miles nearer to Boston than the competitive point from which the lower rate was given, and was on the same line, and in the same direction over which the lumber was in each instance transported by the carrier to Boston.

An investigation showed that it was simply a case of a shipper from one interior point shipping his lumber first to one competitive point, a large city, and trying the market there, and afterwards, by another shipment, availing himself of the lower rate made by the carrier from such competitive point to the city of Boston, while the shipper of lumber at the interior point on the same line and in the same direction, but several hundred miles nearer to the city of Boston, was required to pay a higher rate. Accordingly the Commission held that the lower rate for the longer haul was not justified, and directed that the rate at the interior point nearest to the

city of Boston should be reduced below the rate for the longer haul, which was done.

UNIFORM CLASSIFICATION.

It becomes our duty to report the progress that has been made by interstate carriers in reference to the subject of uniform classification, and in doing so it is to be regretted that the results attained have not been equal during this period to what the indications then existing led us to expect might be accomplished at the time of the presentation to Congress of our second annual report. At that time a call had been issued by a conference consisting of representatives from each of the leading traffic associations of the country, dated November 15, 1888. In that conference it had been agreed that this call should be made for a meeting of officers, agents and representatives of each of the great freight associations of the country in the city of Chicago on the 4th of December, 1888, for the purpose of determining what progress could be made toward unifying the several freight classifications then in use. Delegates from each of these associations were appointed to that meeting, and there were eight of these traffic associations. The attendance was of a character to fairly entitle the conference to be considered national in its representation. The Pacific, the South, the West, the Middle, the East, and the New England States had representation.

At this meeting two days were spent in discussing the subject under consideration, and finally resolutions were adopted to the effect that in the opinion of the committee greater uniformity in classification of freight is both desirable and practicable, but that the magnitude and diversity of the interests involved are such that strict uniformity can not be reached by forced or hurried measures without producing conditions disastrous to the business interests of the country, while it may be closely approximated without danger to these interests by frequent conference and constant effort by the carriers to remove the disparities in the several classifications now in use; and that the progress in the past in this direction attests this view. A standing committee, composed of two members from each of the traffic associations, was

appointed for the purpose of unifying as rapidly as possible the several classifications in use. The committee was instructed to first endeavor to combine the existing different classifications in one general classification by the use of such number of classes as would prevent conflicting commodity as well as class rates in the several sections of the country, without sacrificing the proper interests of the carriers.

The committee organized, met after the adjournment of the general meeting, and agreed upon methods of procedure for the first regular session, to be held in Chicago, February 5, 1889, at which time the committee met with a full representation, either in person or by proxy; and this session lasted seven days. After three days spent in discussion the committee agreed upon rules and regulations necessarily preceding a classification, and the remaining time was spent in discussing questions of classification. The committee, however, divided upon the question of representation as between the West and the East, the Western representatives claiming that they did not have sufficient representation. After this, and when the committee met in New York, in June, 1889, the four delegates from the Texas and Trans-continental Associations and from the Trans-Missouri Association had withdrawn. But notwithstanding this the committee met in Saratoga in September, 1889, and continued its work, and after a four days' session adjourned to meet in New York during the same month, at which place a session of one day was held. Afterwards the committee met in Washington, D. C., November 19-23, where the work assumed much of a routine character. The list of articles to be placed embraced nearly six thousand items, and in many cases involved protracted discussion. The committee is yet far from having completed its work.

The members of the committee are of the rank of general freight agents, on the idea that judgment and experience in traffic matters are requisite to the proper performance of the task assigned. The excuse made for the short sessions of the committee, as above outlined, is that the members of the committee are general freight agents and are busy men, upon whom large and pressing responsibilities, growing out of

their official positions, constantly rest. The report of the committee, when made, will be merely recommendatory, and will go to the various traffic associations and carriers for adoption or rejection, as these constituent bodies may determine.

As stated in the first and second annual reports of the Commission, the difficulties and work connected with establishing a uniform classification or even approximating a uniform classification are indeed very great. The short sessions, however, devoted to this work at long intervals by the committee, the tedious delays and the failure to reach a result that amounts even to a recommendation to the freight associations and carriers, who, after all, may accept or reject the work of the committee, would seem to indicate that much more might have been done by the freight associations and carriers if more time had been taken for this work, and that while recognizing, as they fully do, the importance of an approach to uniform classification, the freight associations and carriers have not yet taken such effective steps to reach that result within a reasonable time as is commensurate with its importance, though the good faith of the committee in their efforts is not intended to be questioned by anything said in this report.

While it is true that it does require men of judgment and experience, well versed in freight matters and in the business and interests of localities, to perform well the task of preparing such a classification, yet it would not seem to follow that the only person possessing such experience and capacity that could be found to represent each of the great freight associations would necessarily be a general freight agent; and if it be considered that the general freight agent's presence is necessary in the work of such committee, then it does not appear to follow that some other suitable arrangement can not be made by the carriers for the place of the general freight agent being properly filled by some other competent person temporarily while the general freight agent is engaged in the important work of preparing a uniform classification to be submitted to the carriers for their approval or rejection. A work of this character and importance, in view of the pro-

visions of the Act to regulate commerce and the general interests of the country, should be made the subject of more than a few days' meetings at long intervals from time to time during the course of a year. When such report is made as a recommendation, it will doubtless undergo the most careful scrutiny and revision at the hands of the carriers, and will be antagonized in many instances by local and special interests; and while this is a reason that it should be well and carefully prepared in the first instance, it is also a controlling reason that it should be framed at as early a period as it can reasonably be done.

Not only will it be true that the carriers will act upon the proposed uniform classification as a mere recommendation, but it is also true that after that classification is adopted, if it succeeds in approximating uniformity in the treatment of the bulk of the tonnage interchanged between eastern, western and southern roads, and should be adopted and made effective upon the lines operating between the Atlantic seaboard and the Rocky Mountains, complications to some extent may still arise on account of the different classifications maintained on local traffic within State limits in some of the States. Confusion would, to some extent, certainly follow if by the use of an interstate classification at the point of junction with a State classification the two could be combined to make a lower total charge on a shipment from the point of origin to destination within the State in question. On shipments carried through a State, in which conflicting classifications would govern, to a point beyond such State, the intermediate classification of the State would not interfere; but on shipments within State limits some embarrassments from these causes might follow.

We do not believe, however, that any serious trouble in this respect need be anticipated, inasmuch as, consistently with the demands for greater uniformity in freight classifications which have proceeded from the various sections of the country and have by none been supported with greater vigor than by the State boards of railroad commissioners, the latter would doubtless find it to their convenience and would cheerfully accommodate their regulations to those which by

reason of their approach to uniformity, would be likely to claim the stamp of national approval and general utility. If the carriers engaged in interstate commerce agree upon an established and uniform classification of freight, or what is a near approach to such uniformity, with perhaps here and there a few commodity tariffs, it could hardly be said to be a supposable case, until the contrary is demonstrated, that exceptional State classifications in a few of these States will be permitted to stand as obstructions and disturbing elements to the free flow of the commerce of the country and the regulation provided by Congress for this commerce.

Regarding the character of this work, its importance, the time necessary for doing it and putting it into effective operation, and those by whom it could most properly and should be done, a report and discussion of these now would only involve what has heretofore been said after the most careful consideration of the same matters in our previous reports, and to which nothing substantially new could be added. Yet no consideration of the subject can be intelligent, just and fair which would leave out of view these features of it. In this connection, and as the entire subject is one of very great interest and importance, we would again submit as part of this report extracts from what was said by us in regard to it in our first and second annual reports.

In our first annual report we referred to this subject as follows:

It is greatly to be regretted that the same classification is not adopted by the carriers by rail in all sections of the country. The desirability of uniformity is so great that the suggestion is frequently heard that national legislation should provide for and compel it. If such legislation should be adopted it would be necessary to empower some tribunal to make the classification, and the difficulties which would attend the making would be very great. Relative rates would be involved in it, for classification is the foundation of all rate-making. It was very early in the history of railroads perceived that if these agencies of commerce were to accomplish the greatest practicable good, the charges for the transportation of different articles of freight could not be apportioned among such articles by reference to the cost of transporting them severally, for this, if the apportionment of cost were possible, would restrict within very narrow limits the commerce in articles whose bulk or weight was large as compared with their value.

On the system of apportioning the charges strictly to the cost, some kinds of commerce which have been very useful to the country, and have tended greatly to bring its different sections into more intimate business and social relations, could never have grown to any considerable magnitude, and in some cases could not have existed at all, for the simple reason that the value at the place of delivery would not equal the purchase price with the transportation added. The traffic would thus be precluded, because the charge for carriage would be greater than it could bear. On the other hand, the rates for the carriage of articles which within small bulk or weight concentrate great value would on that system of making them be absurdly low; low when compared to the value of the articles, and perhaps not less so when the comparison was with the value of the service in transporting them.

It was, therefore, seen not to be unjust to apportion the whole cost of service among all the articles transported upon a basis that should consider the relative value of the service more than the relative cost of carriage. Such method of apportionment would be best for the country, because it would enlarge commerce and extend communication; it would be best for the railroads, because it would build up a large business, and it would not be unjust to property owners, who would thus be made to pay in some proportion to benefit received. Such a system of rate-making would in principle approximate taxation; the value of the article carried being the most important element in determining what shall be paid upon it.

Accordingly, and for convenience and certainty in imposing charges, freight is classified; that which comes in one class being charged a higher proportional rate than that which is placed in another. But other considerations besides value must also come in when classification is to be made. Some articles are perishable, some are easily broken, some involve other special risks in carriage, some are bulky, some specially difficult to handle, and so on. All these are considerations which may justly affect rates, and therefore may be taken into account in classification. But still others have been found potent. Every section of the country has its peculiar products which it desires to market as widely as possible, and is not unwilling that classification should be made use of by the railroads which serve it as a means of favoring and thus extending the trade in local productions; favoring them by giving them low classification and thus low rates, and discriminating against those of other sections through a classification which rated them more highly.

It has been in the power of every railroad to have a classification of its own; but the necessities of an interchange of business have brought about agreements, and the railroad associations have been given the authority to make classifications for all their members. Their labors in this direction have been extremely important and useful; they have been steadily reducing the number of different classifications in the country, and steadily approaching a condition of things in which there will be one

only. But in these associations, when in session for the making of rates, each railroad official has, to some extent, had the district which was served by his road behind him; he has felt the pressure of the interests there, and contended for them as against the interests in classification represented by others, not only because it was desirable that the road should favor the policy its patrons favored, but also because the same policy was likely to be beneficial to both.

The result necessarily is that a classification made by a railroad association represents a series of compromises, to which not only the railroads are parties, but in a certain sense business interests and sections of country also; these in many cases being admitted by their representatives to the consultations upon a subject so vitally concerning their interests, and allowed to present their views. This contention of interests still continues to go on in the meetings and conferences, but with a steady tendency in the direction of one uniform classification, and there is reason to hope that without much further delay all classifications will be brought into harmony. If any other tribunal were to be given the authority to make classification, it must, if it would exercise its power wisely, proceed in much the same way; it must act deliberately, give all interests an opportunity to be heard, take into account all the considerations which ought to bear upon it; cost of service, interest of sections, equity as between industries and between classes of persons, and so on indefinitely.

Whether, therefore, the steady tendency in the direction of one uniform classification would be hastened by conferring the power to make one on a national commission is not entirely certain. The work if taken up anew would be one requiring much time for its proper performance; it would involve a careful consideration of the interests peculiar to different sections of the country, and a close study of the conditions of railroad service as they bear upon such interests. But these conditions change from month to month; the classification can not be permanently the same, but must be subject to modification on the same ground on which it was originally made; the appeals for modifications would be as numerous as they would be perplexing, because of the diversity of reasons on which they would be grounded. Under the law as it now is the Commission has appellate powers to correct any unjust classification, and it will keep in view the desirability of general uniformity and do what it properly can to bring about that result.

* * * * *

And again in our second annual report we referred to this subject as follows:

In the first annual report of the Commission attention was called to the fact that rates for railroad transportation are to some extent adjusted on principles analogous to those on which taxes are laid; the articles or the interests that can least afford to bear such burdens are given the benefit of low rates which the carriers can not afford to give to all,

and higher proportional rates are levied upon the articles and interests which would feel the burdens less. This method of adjusting rates has been and is of very high value to the country; indeed, it may be said to be indispensable.

The business of a railroad company as a carrier of freight is to exchange for the people the products of different sections and countries, and this exchange, as to many commodities in a country so large as ours, or indeed in any considerable country, would be restricted to comparatively small sections if articles which are at once bulky and cheap and articles which in small compass comprise very great value were alike charged rates for transportation which disregarded the value as an element of estimation, or took it into account only so far as reasonable insurance against loss or injury might render prudent. Railroad managers very soon discovered that they could not measure their rates exclusively by the standard of cost of carriage of the several kinds of traffic, separately considered; but it was wise for themselves and best for the country that the cost of carriage be considered in the aggregate and that the rates which are to be the compensation for the services performed be then apportioned on special consideration of the value of the service to the kinds of traffic severally. Such an apportionment would seldom be burdensome to articles of high value, but it would relieve cheaper articles from burdens which, if apportioned strictly to the cost to the carriers of their transportation, would render carriage for considerable distances out of the question.

But a practice based upon any such general principles will almost inevitably in its application be subject to many exceptions. Every railroad serves a certain territory, and every part of the country has to some extent interests to be served which are special and peculiar to it, and these it will naturally desire to have specially considered by local, official and corporate authorities, whether the business in hand be the imposition of taxes or the adjustment of rates for transportation; and as many other circumstances besides cost of transportation and value must always be taken into account, such as bulk or weight of articles, convenience of handling, special liability to injury and necessity for speedy delivery, and the field of production or of consumption, so that there can never be any fixed or definite rule for the measurement of the charge to be made upon any particular traffic, it is always possible for the railroad manager in making rates to yield something to the special interests of his section, and still keep in view the general principles upon which he will professedly act.

As rates are apportioned by means of classification of articles which are expected to be offered for carriage, a pressure from sectional interests has been continuously brought to bear upon the authorities in making the classifications to have them so made that those interests be favored which the roads to use the classification will more preserve. For the most part the classifications have been made by

riers themselves; in a few instances they have been made by State commissions, but under influences corresponding to those which have influenced the carriers in the same work. The carriers, it may be assumed, have primarily consulted their own interests, but they have also at the same time consulted the local feeling and the local interests, and have commonly found that their own interests were best subserved in doing so.

The consequence has been that a great number of classifications have been in force in different parts of the country, some of them covering large and some small sections, some made for several but more made for single roads. In very many cases there were two or more classifications in force on a road; one for the traffic in one direction, another for that in the other, a third, perhaps, for the traffic coming from or going to a particular section of the country, and so on. The existence of so many was a great public evil, and it necessarily resulted in constant embarrassment in the interchange of traffic between the roads. The owners of the freights were more annoyed than the carriers themselves, for they were perpetually subject to the liability to be called upon to pay charges for transportation, which were greatly in excess of any which they had anticipated. Unexpected charges were likely to breed controversies and cause delays in transportation and delivery, and, in the minds of those unfamiliar with the subject of classification, there were often suspicions, based on appearances which afforded color for them, that the carriers were guilty of intentional wrong and unjustifiable exactions.

The principal classifications now in force are the Official, the Western, and the Southern Railway and Steamship Association classifications. The territory embraced by them severally may be roughly indicated as follows: The first, the territory east of Chicago and north of the Ohio river; the second, the territory west, north, and southwest from Chicago; and the third, the territory south of the Ohio and east of the Mississippi. It must be understood, however, that neither of them is exclusively made use of in the territory indicated. Commodity rates are given to a considerable extent in Pacific coast territory, especially upon through transcontinental business, and individual roads in all sections use classifications of their own when circumstances seem to require it.

Efforts in the direction of uniformity have continuously been made during the last year. The most important of these was through a conference of representatives of roads east and west of Chicago, whose sessions began in September, 1887, and extended to July, 20, 1888. This conference, it was hoped, might result in merging the Official and Western classifications. That result was not accomplished, for reasons stated in a report adopted by the conference, and which is given in appendix E.

It has seemed to many persons that to unify classifications must be a very simple task. What is classification, it may be asked, but the arrangement of the several articles of commerce under different heads, as pupils in a school may be arranged in classes for recitations, or as a farmer may send his stock for pasturage to different fields? But those

most familiar with the subject of classification will be least inclined to look upon the making of a uniform classification as a very simple affair. It is very far from being a simple affair. It is, on the contrary, as difficult a task as under the ordinary operations of government is likely to be devolved on any person or any body of men. In its nature it corresponds closely to the making of the customs tariff for the country, but the necessity for going into particulars may be greater, for classification must reach every article of ordinary commerce, and it must be framed on the understanding that for every one some burden is to be provided, though among them all there may be apportionment of burdens on some principle adjusted to the general good. And when it is understood that the classifications now in force have come into existence to a very large extent as an outgrowth of local and sectional feelings and interests, it will readily be perceived that the difficulty in prescribing uniformity is very much greater than it would be if the work could be taken up now unembarrassed by what has heretofore been done, and by the adjustment of business interests to classifications now in force. In fact, the difficulties are now so great that many intelligent persons in railroad service do not believe satisfactory unification is now possible. This is not, however, a universal belief; many practical railroad men hold a different view, and are now working to that end.

The Commission believes that all action taken on the subject should lead towards uniformity, but that to force it at once would be undesirable. In all consideration of the subject it must be borne in mind that the carriers are not the parties whom unification would most affect. Some carriers might gain and some, perhaps, at first lose thereby, but the most of them would be able so to adjust their rates that the losses would be inconsiderable, and would also be temporary. But the business interests of the country would have no similar power of self-protection. Unifying the classification means, necessarily, the placing of the same article in the same class for the purposes of rating in all sections of the country, with the effect as to some of them of lowering the rates greatly in some sections, while advancing them, in perhaps the like proportion, in others; so that, in the same business, while one dealer might be greatly benefited, another might be ruined. And what would affect injuriously a single dealer would in like manner affect all in the same line of business in the same section of country, and to some degree the country at large as well.

The carriers could not possibly protect against such a consequence; for, while the rates would not necessarily be the same in different sections, the rates which any road imposed on one class would be identical, so that the power to adjust transportation charges with a view to local or sectional interests which now exist and is supposed to be of value would be taken away. And the relative change which would be effected in making uniform classification operative as to any particular business would be far more injurious, because of its affecting individuals and

sections differently, than would any absolute increase in rates which affected alike and to the same extent all the traffic subjected to it.

The very first step to be taken by any one who should attempt uniform classification would be to make a study of the reasons from which the existing classifications have sprung. This study would need to be made in the territory which the classification covers. All existing classifications have resulted from many compromises. Pacific coast and Texas interests have compromised with those of the interior in the recent extension of the Western classification, and they would probably be forced to compromise further if the Official and the Western classifications were merged. But no one intrusted with the task of merging them would be excusable for making the attempt without better information to act upon than could be obtainable from a few witnesses summoned to Washington to give it.

Even in the territory whose interests may be supposed to be homogeneous, the Commission has encountered serious and earnest antagonism when classification was in question. One of the chief impediments to the merging of the Official and the Western classifications has had regard to car-load classes. The carriers east of Chicago and their patrons desire that there shall be very few; the carriers west of Chicago and their patrons very generally think it for their interest that there shall be a considerably greater number. The feeling on the subject was very well illustrated at a session held by the Commission in one of the Western States last year. Eastern merchants were moving to have car-load classification materially restricted. Several State commissions by concerted arrangement came to the meeting to express their strong and very earnest opposition. It was their belief that the measure proposed, if it should be adopted, would be greatly injurious to the interests of the States they represented.

Without any previous knowledge on the subject an opposition of the sort could hardly have been anticipated, but such facts can not fail to impress the mind that to the proper performance of the task of unification it is indispensable that a somewhat extensive knowledge be first acquired, not only of local interests, but also of the relation of those interests to interests of similar nature elsewhere. Nobody can acquire this knowledge from the public press, or from the reports of a few persons, however intelligent, who may be summoned to give information. He will need to feel the pulse, so to speak, of the several sections of the country; to make himself acquainted with their various interests, so that he may be able to judge how far any changes will affect them severally. In studying the effect he will be very sure to find that even locally the interests of the farmer, the manufacturer, the jobber, and the retail dealer are not identical, and that what would benefit one might harm the other.

The final adjustment of a uniform classification must necessarily be the arrangement of a great number of compromises. It may happen, there-

fore, that those who are now most earnest in desiring one will be most opposed to any that can be agreed upon. The Commission has received letters on the subject from intelligent business men, but who, having never investigated it, are evidently in error as to what can be expected as a result of what they ask for. Some of the writers appear to think that unification will be little more than extending the classification of their section, with which they are familiar, to the whole country, and will be surprised to learn that it can not be made without adopting features from other classifications which their sections have always objected to. But others desire uniform classification because they expect by means of it to get rid of the principle of considering the value of the service in making rates, and to have the cost of the service to the carrier made the measure of charge, or to have some other practice done away with that does not in its application work to their advantage. A manufacturer of doors and blinds, perhaps, looks to have his product classified with undressed lumber, and the manufacturer of patent medicines, who knows that his boxes can be carried as cheaply as the boxes containing merchandise selling for one-tenth or one-twentieth the sum, expects them to be so classified that they will be rated accordingly. But to any one familiar with the subject the impossibility of meeting such views will be obvious. It would not be for the general public interest that they should be met. This statement sufficiently suggests not the probability merely, but the certainty, that uniform classification will result in many disappointments.

The reasons above given are reasons for approaching uniform classification with some caution. There are other reasons for urging the carriers in the direction of unification, and not taking it out of their hands so long as they seem to be moving in that direction in good faith and with reasonable diligence. They have knowledge of the local interests which are represented in existing classifications, and their practical experience gives them special fitness for the task. Moreover, this course will have the further advantage that if complaints are made of the classifications the Commission will come to their consideration with minds unembarrassed and uncommitted by previous action of their own.

But it should be further understood that a uniform classification once made can not immediately be put into effect. Considerable time to prepare for it is absolutely essential.

First, it should be stated that the putting it into effect involves the sweeping out of existence of every rate sheet in the country and the making of new rate sheets by every railroad company. This requires an enormous expenditure in printing, which, of course, must in some manner be made up from the rates imposed. But the cost of preparing the rate sheets would be vastly greater than this. To determine what the rates ought to be on the several classes would be a labor of infinite difficulty.

Suppose a railroad manager, with the new classification put into his hands, were to address himself to the task of determining what rates he

ought now to charge in order that his company may collect the same revenue it has been accustomed to receive. First, he will perceive that the class rates should not be the same as formerly ; the number of classes is probably different, but, whether different or not, the position of articles in the classes is so different that the imposition of the same rates as formerly may either increase the revenue very greatly or may largely diminish it. In order to determine how this is likely to be it would be necessary to make careful study of the classification in the light of the past and probable future traffic of the road ; not the traffic in bulk, but the traffic in each particular article, bringing together for further study the aggregate of articles now ranged in one class, and so going through with the classes successively. And when it is remembered that at the conclusion of his task very many of the patrons of the road will find their rates increased—on some perhaps largely increased—and that very many complaints are to be expected under any circumstances, the importance of avoiding the giving of just grounds for complaint will be so obvious and so great as to demand special care in that direction. All these are reasons rendering it almost imperative that considerable time be allowed for the making of this adjustment of rates after the classification shall have been completed.

But, second, the allowance of time for the adjustment is even less important to the rate maker than to the patrons of the road. If the rate maker errs in making the rates under such circumstances, the error is likely to be one which favors his road at the expense of its patrons ; and when that is the case, though it may be corrected after some delay, business interests, which under any circumstances would suffer somewhat in the change, must then, for a time, be exposed to injury that with greater care and more deliberation might have been avoided. But any sudden change in railroad rates means a like change in values. A prospective change, publicly notified, the business man may prepare for with perhaps little or no injury to his business, but those whom a sudden change affects have no means of warding off injurious consequences.

The Commission sums up its conclusions on this subject by saying :

(1) Uniformity in classification, as far as it can be accomplished without serious mischiefs, is desirable.

(2) There is gratifying progress in the direction of unification, and it has been very marked within the last year.

(3) So long as the carriers appear to be laboring towards unification with reasonable diligence and in good faith, it is better that they should be encouraged and stimulated to continue their efforts than that the work should be taken out of their hands.

(4) In view of the mischiefs that would flow from sudden changes, ample time should be given for the purpose. Uniform classification can only be wisely and safely made by careful study and deliberate action, and the adjustment of rates to it needs corresponding caution and deliberation."

The views expressed by the Commission as to the importance of uniform classification, the difficulties connected with it, and the time and labor necessary to reach it and to put it into effect with safety, have undergone no change or modification as expressed in our previous reports. Since our second annual report, however, considerable progress has been made practically on the line of uniform classification by the absorption of special and exceptional classifications into those of the three chief classifications of the country, namely, the Official, the Western and the Southern Railway and Steamship Association, as will appear by Appendix 7, made part of this report.

COMPETITION BY CANADIAN CARRIERS.

The competition of Canadian common carriers is a factor of influence and increasing force in the transportation interests of the United States, and is not casual or temporary, but permanent. It was deliberately planned in the past, and has been advanced to its present state with persevering energy. Its agencies are natural and artificial water-ways and great railroad systems constructed at large expense and materially aided by Government subsidies. Our Government policy authorizing American goods to be transported in bond over Canadian lines and to re-enter our country free of duty, thus putting the transportation upon an equality with that over our own lines, has assisted these agencies to business. Valuable assistance has also been afforded by our own citizens by direct investments in the construction of Canadian railroads and in building connections within our own territory with those roads, and leasing or otherwise surrendering control of these connections to Canadian companies. Concessions of rights of way over our soil have also been made.

The existence and character of Canadian competition are therefore largely due to friendly co-operation on the part of our own country, inspired as it would seem by a policy of business independent of national boundary lines, and regardless of rivalry by the subjects of a foreign jurisdiction. What is called Canadian competition, therefore, is the common use by our own citizens of Canadian carriers for business that

might be done by our own carriers, and induced solely by commercial considerations.

The Dominion of Canada stretches from ocean to ocean like our own domain, and its great lines, located safely within its own border, have auxiliary lines and feeders at numerous points along the whole distance of nearly 4,000 miles, over which our products, moving from one part of our country to another, are transported in uninterrupted and increasing volume. Our whole northern border is penetrated by these connections. They exist in Maine and Vermont, and reach the whole of New England; they come into New York at several points; they traverse Michigan in many directions, reaching Wisconsin, and go through Indiana and Illinois; they are very effective in Minnesota, both on its eastern side and its northern frontier, and in the new State of North Dakota. On the Pacific side, they reach by water the States of Washington, Oregon and California.

The main line of the Grand Trunk Railway, for American business, extends from Chicago, Ill., to Portland, Me. The Canadian Pacific road, with its connections, both in Canada and the United States, stretches across the continent from Halifax to Vancouver. It has, or soon will have, a direct line from Portland, Me., through New Hampshire and Vermont to the Pacific coast, by connection with its main line at Newport and with other connections at intermediate points. It also has a direct line to Minnesota south of Lake Superior over its connection with the Minneapolis, St. Paul and Sault Ste. Marie, usually called the "Soo Line," by which St. Paul, Minneapolis and the country tributary to those cities are reached, and over the Duluth, South Shore and Atlantic Railway to Duluth, reaching the traffic of that city and its tributary region. The connection from Winnipeg to the Minnesota line, and then over the St. Paul, Minneapolis and Manitoba Railroad, gives it a through line for all east and west bound business between the Northwest and the Pacific coast; and freight and passengers between San Francisco, Portland, Port Townsend, Seattle, Tacoma and points in the Northwest and interior of the United States,

and all points in the eastern portions of the United States, are transported over these lines.

The Canadian Pacific Railway, by the recent extension of its line across and nearly through the center of the State of Maine to its terminus at Mattawamkeag, and thence by trackage rights from the Maine Central to Vanceborough, on the New Brunswick boundary, where it connects with the railway system of the maritime provinces of Canada, has a direct route to St. John and Halifax.

These are the general physical conditions of the competition in question. A detailed and more precise statement of the connections of Canadian carriers with the United States and the methods by which the transportation is carried on, together with the present American and Canadian competitive rates over these connections in force, is set forth in Appendix 8.

The reports of the Canadian Pacific Railway Company on file in this office do not show separately from its aggregate business the earnings and tonnage of its business with the United States. Its report for the year ending June 30, 1888—the last filed—shows a mileage of 4,661 miles besides the Southeastern Railway, its connection from Montreal to Newport, Vt., which has a mileage of 109 miles; a total capital of \$110,392,563; gross earnings, \$12,711,010; total freight tonnage, 2,321,957.

The connections controlled by the Grand Trunk Railway Company within the United States, as appears by the reports for the year ending June 30, 1889, embrace a mileage of 977.23; capital stock, \$42,371,807; gross earnings, \$6,193,781; and total freight tonnage, 3,773,831.

The statistics, however, are general, and do not show the kinds of traffic carried, nor its place of origin or destination. The freight from the Northwest, consisting of grain and grain products, beef and live stock, annually taken into the State of Maine alone for consumption and mainly brought over Canadian roads, exceeds 200,000 tons, and the exports through Portland of American products, carried by these roads, are considerable. The reported tonnage of the Atlantic and St. Lawrence Railroad, the Portland branch of the

Grand Trunk, was 957,735 tons. What quantities were taken over Canadian lines and their connections to Boston and other New England points, and to New York and Philadelphia, there are no statistics at hand to show, but the Boston traffic is probably 50 per cent. or more of the transportation for that city.

It is estimated that fully one-third of the through business of the Canadian Pacific to and from the Pacific coast consists of traffic furnished from the United States. The west-bound business going over the Canadian lines originates at various places in the New England and Middle States, and at the Northwest. These lines therefore compete for traffic moving in both directions across the continent, or across sections of it. The competition is consequently with all our east and west bound lines, both the transcontinental and trunk lines, and in nearly all the varieties of traffic.

The explanation for the diversion of such a considerable amount of traffic from our lines to the Canadian carriers is found in the rates charged. Our own lines, it may be assumed, make their competitive rates as low as they can afford to do the business at any fair profit, and, not having unrestricted liberty to charge less for a longer than for a shorter distance over the same line and in the same direction to make good, if necessary, any loss on long-haul traffic by higher charges on local traffic, their rates must be adjusted to make some profit on all traffic, and be graduated to comply with the law.

On the Canadian roads, although the distances are almost invariably longer, and in many instances very much longer, the rates on all United States traffic are materially lower. By traffic arrangements between American companies and the Canadian companies differentials are allowed to the latter, which furnish an inducement to shippers to patronize those lines for freight for which the quickest transit is not urgent. These differentials are conceded to avoid rate wars, and they involve a diversion of whatever business the reduced rates may invite.

The concession to the Canadian Pacific on business between San Francisco and St. Paul, Minneapolis and com-

mon points, ranges from 15 cents per hundred on first-class traffic to 5 cents on the lowest commodity class. Between San Francisco and more eastern points the concessions are progressively greater at Chicago, Cincinnati, Pittsburgh, New York, and the points common to them, reaching at New York, Boston and Philadelphia, and their common points, 28 cents on first class, 14 cents on fifth class and 5 cents on the lowest commodity class. A differential of 28 cents per hundred pounds is \$5.60 a ton, or \$67.20 a car-load of 12 tons. Under adjustments at present in force the United States roads from New York, *via* Chicago, to St. Paul, Minneapolis and common points allow differentials *via* the Canadian Pacific, on different classes of merchandise of 10, 8, 6, 4 and 3 cents per hundred pounds. It is to be remarked that the differentials are not permanent, but change from time to time, and that the Canadian connections with lines in the United States and the transportation arrangements also frequently change, and are constantly becoming more numerous.

A natural inquiry arising on these facts is how the Canadian roads can afford to carry at so much lower rates than American lines, and why the rates for both are not uniform. There are various answers to this inquiry. In the first place, they must in general carry at lower rates in order to participate in the carriage of American traffic. The differentials consented to by traffic arrangements to preserve amicable relations and to maintain steadiness of rates have been mentioned. The lower rates are therefore, first of all, a necessity of the situation.

Again, the American roads are many in number, keenly competing among themselves, and dividing the business which, particularly west of Chicago, might be reasonably remunerative for one-half or one-third the number; and therefore, in order to maintain their existence, are compelled to charge rates that might be lower and yield a profit to the carrier if the volume of business were greater, or equal to the capacity of the road. The American roads are also under many different, independent and sometimes hostile managements, increasing the expense of general control, creating a necessity, or at least occasion, for numerous auxiliary asso-

ciations with governing or regulating powers, maintained at heavy cost, and requiring, for continuous carriages over long distances traffic arrangements between several different carriers for interchanges, divisions of earnings, joint tariffs, payments for use of cars, and other things. The exceptionally heavy grades of the trans-continental lines to overcome mountain summits, large expense for fuel, for maintenance of snow sheds and snow service, and other incidental matters, add greatly to the cost of operation.

On the other hand, very different conditions exist with respect to Canadian carriers. On the Canadian Pacific, the only through trans-continental line, the grades are much easier, and, it is claimed, less interruptions occur from snow blockades and similar causes. There are practically only two great systems in Canada, the Grand Trunk system and the Canadian Pacific. There is, therefore, unity of control and management, and no occasion for auxiliary associations nor for divisions of earnings, except with adjuncts in the United States. Besides, they are heavily subsidized by direct government grants and favored by liberal allowances for transportation. They are practically under no restrictions imposed by their own statutes in respect to long and short-haul traffic, but are at liberty to charge high rates on local business to indemnify for losses on through or international business. Their managers deny with more or less emphasis that their local traffic is subjected to higher rates, but when the liberty to make such charges and the necessity for it co-exist, the inducement at least is strong. The provisions of the Canadian statute on this subject are as follows:

SEC. 226. The company, in fixing or regulating the tolls to be demanded and taken for the transportation of goods, shall, *except in respect to through traffic to or from the United States*, adopt and conform to any uniform classification of freight which the governor in council on the report of the minister, from time to time, prescribes.

SEC. 232. No company, in fixing any toll or rate, shall under like conditions and circumstances, make any unjust or partial discrimination between different localities; but no discrimination between localities, *which by reason of competition by water or railway, it is necessary to make to secure traffic*, shall be deemed to be unjust or partial.

These enactments give all traffic carried in competition with our carriers unlimited freedom.

Some or all of these conditions may furnish an explanation. In a word, their lower rates are necessary to get the business at all, and, as is seen, the conditions under which they are made are favorable.

There is no doubt that considerable portions of our country are benefited by the transportation over Canadian lines, by reason of the cheaper service, especially northern and central New England and large portions of the Northwest, as far south as Chicago and including Michigan, and, in fact, generally along the whole border, and even beyond it. Many of our citizens feel a deep interest in the subject, and would consider themselves aggrieved by any measures resulting in an advance of rates over those roads. High cost of staple articles of consumption forming part of the necessities of life is to be deprecated, and is an argument of great force against higher rates. It is possible, however, that these apprehensions are mistaken, and that a greater volume of business over our own lines would so cheapen rates as to result in no advance in cost to ultimate consumers. At least that has been the uniform lesson of experience in railroad transportation.

What, if any, method of regulation shall be applied to the competition by Canadian common carriers in our traffic is a question for Congress to determine. There are considerations on both sides of this question. On one side, it is generally urged, is the fair protection against foreign rivalry of our own carriers, with the immense sums invested in their construction, the multitudes of our people engaged in their operation, and their inestimable importance to the country, commercially and as agencies for its development and settlement, and for all governmental purposes.

And on the other side are urged the interests of such portions of our citizens as are not so well or so cheaply served by our own carriers, and who claim the right to make use of any agencies that will best subserve their own interests and give them an equality of advantages with others.

Besides, it is said, and perhaps with force, that the com-

petition of Canadian carriers exerts an influence not unlike that of the Erie Canal in preventing unreasonably high rates by our own carriers, and that the competition is, therefore, in the public interest. It is also claimed that investments made by our citizens, either directly in Canadian roads or in the construction of their connections in the United States, are entitled to consideration.

Another important fact is the reciprocal privilege of conveyance, by some of our carriers, of goods and passengers by land through portions of Canada, or through Canadian canals, under the following provision of Canadian law:

The governor in council may, from time to time, and as occasion requires, make such regulations as to him seem meet, with respect to goods conveyed directly through the Canadian canals or otherwise by land or inland navigation, from one part of the frontier line between Canada and the United States to another, without any intention of unloading such goods in Canada, and with respect to travelers in like manner. . . . (Revised Statutes of Canada, 1886, Vol. I., sec. 246.)

The bonding of merchandise in transit through Canada was authorized by Act of Congress of July 28, 1866, and embodied in section 3006 of the Revised Statutes of the United States, which is as follows:

Imported merchandise in bond, or duty paid, and products or manufactures of the United States, may, with the consent of the proper authorities of the British Provinces or Republic of Mexico, be transported from one port in the United States to another port therein, over the territory of such provinces or republic, by such routes and under such rules, regulations, and conditions as the Secretary of the Treasury may prescribe; and the merchandise so transported shall, upon arrival in the United States from such provinces or republic, be treated in regard to the liability to or exemption from duty or tax as if the transportation had taken place entirely within the limits of the United States.

The term "port" is defined by section 2767 of the Revised Statutes as follows:

The word "port," as used in this title, may include any place from which merchandise can be shipped for importation, or at which merchandise can be imported.

The regulations of the Treasury Department in relation to this provision are as follows:

ARTICLE 836. Merchandise of domestic origin, duty paid or free of duty, may be transported from one port to another of the United States, over the territory of the Dominion of Canada, with the consent of the proper authorities, by routes duly designated and bonded for such purpose. Cars, compartments of cars, or safes, must be specially appropriated for such transportation, placed under customs seal by an officer of the customs at the port of departure in the United States, and remain thus sealed until they shall have passed through such foreign territory and again arrived in the United States. (S. 3041.)

It is understood that, under the regulations of the Treasury Department, a license is issued by the Secretary to Canadian carriers under the privilege provided for by law to transport goods in bond through Canadian territory.

The sixth section of the Act to regulate commerce contains this provision:

And any freight shipped from the United States through a foreign country into the United States, the through rate on which shall not have been made public as required by this Act, shall, before it is admitted into the United States from said foreign country, be subject to customs duties as if said freight were of foreign production; and any law in conflict with this section is hereby repealed.

This only relates to the making public of the through rates, and leaves open for controversy the question of the amount of the through rate and its relations to the contemporaneous rates of our carriers.

In view of the fact that this whole subject has undergone thorough investigation by an honorable committee of one of the Houses of Congress, this Commission offers no recommendation, and only sets forth some of the leading facts and circumstances brought to its attention in the performance of its duties.

PROPERTY TRANSPORTED BY CARRIERS SUBJECT TO THE ACT TO REGULATE COMMERCE TO PORTS OF TRANS-SHIPMENT FOR PURPOSES OF EXPORT.

Among the subjects of regulation provided for by the Act to regulate commerce is property transported to seaports

for the purposes of export. The first instance arising in the exercise of this jurisdiction on the part of the Commission occurred in the month of April, 1887, and was upon an application made by three railroad companies having terminal lines at the city of Boston to be allowed to continue a method theretofore practiced and then existing of making their rates from interior western points on grain and provisions to Boston, for export through that port, the same as the rates from such western points to New York, although the distance was somewhat greater, and the rates upon the same articles to Boston for local consumption were higher. A person interested in the local grain and provision trade of Boston, though not a party to the proceeding, was heard in favor of the contention that any concessions made in favor of the export trade of Boston ought, in fairness, to be extended to all other persons to whom grain and provisions might be consigned to that city from interior western markets.

In that proceeding the Commission held that, as explained by the petitions and the evidence adduced in their support, the rebate or difference made in favor of the export traffic had for its purpose the correcting of an inequality that would otherwise exist, and which inequality, by making the cost of foreign shipments by way of Boston greater than by way of New York, would practically exclude shippers from the advantages of the Boston route, though the distance from the interior points to the foreign market would, practically, be no greater by that route than by the other; and if such purpose was only to do indirectly what might directly be done by a bill of lading issued at the interior point of shipment for delivery of goods at the foreign destination, and no discrimination was made between persons engaged in foreign traffic, but the rebate or difference was made impartially and only as a means of protecting the Boston route for the export trade against an excess in charge that would be ruinous to it, then it was obvious that there was no occasion for calling upon the Commission to give sanction to a practice that would be legal without it; that any legal ground for affirmative action on the part of the Commission was precluded in a proceeding of this character when those who

brought the practice to its attention did so with explanations of its propriety and insisting upon its lawfulness.

It was further held by the Commission in that proceeding that, if what was paid under the name of a rebate was a rebate in fact, as understood by the second section of the interstate commerce law, and if the effect of allowing it was to impose upon some classes of persons a greater charge for the service rendered than was imposed upon others for a like and contemporaneous service under similar circumstances and conditions, and so effected what is described in the law as an unjust discrimination, it would be neither legal in itself, nor could it be made legal by any order, assent, or permission given by the Commission. And the Commission further held that if the exactions from Boston on local traffic were excessive, that fact could only be adjudicated when some one questions them in a proceeding instituted for the purpose of a regular investigation. Leave was given to the petitioners to withdraw their petitions, and they did so. No complaint to the Commission has ever been made against this method of dealing with the export rates at Boston on the part of those interested or engaged in local trade there, and it has continued to exist to this time.

On the 8th day of March, 1888, the Commission issued a general order on this subject, as follows :

Every tariff of rates and charges which a common carrier subject to the provision of the Act to regulate commerce, by itself or jointly with one or more other carriers, whether such carriers are or are not subject to such Act, shall establish for the transportation of grain, flour, meal, meats, provisions, lard, tallow, canned goods, cotton, tobacco, live stock, or other articles of customary export, from any point within the United States to a seaport thereof, or to any point in or on the boundary of an adjacent country, or to any foreign port or place, is required to be filed with the Commission, and shall be made public.

In all cases where a tariff is established for such merchandise billed or intended for export by sea, and ocean rates are not specified, either because of their fluctuation or for any other reason, so that only the charge for inland transportation is definitely fixed, the tariff as filed and made public shall show the rate charged by the inland carrier or carriers to the point of export, including all terminal charges or expenses, and shall also show in what manner the through rate to the point of ultimate destination is to be determined, whether by the addition of the ocean

rate from time to time, or how otherwise. When the rate is a gross sum for the transportation of freight from a point within the United States to a port or place in a foreign country, the tariff as filed and made public shall in every case show what part of the whole is allowed to the carrier or carriers for inland transportation to the point of export by sea, including all terminal expenses or charges ; and if such part is subject to be increased or diminished, contingently or otherwise, or if in any other case the charge for inland transportation is subject to any change or modification in case the property carried is exported, the fact, and the manner in which the increase, diminution or change is to be determined, and the extent thereof, shall be stated.

Every such tariff of rates and charges shall be published by plainly printing the same in large type of at least the size of ordinary pica, and copies thereof shall be kept for the use of the public in such places and in such form that they can be conveniently inspected, at every depot or station of any carrier making or issuing the same at which any traffic to which it relates is received or delivered.

This order shall become operative on March 20, 1888.

Shortly after this a complaint was made to the Commission averring, in substance, among other things, that the trunk lines, so called, under resolutions of their association, had been and were making export rates, of which the inland proportion accepted by them was, at the port of New York, often 10 cents or more per hundred pounds less on like traffic than the published tariff rates charged at the same time to the same port from the interior points consigned to New York as its final destination, and charging that this was an unjust discrimination against the trade and business of New York. In this and other respects this contention involved the rules that ought to govern in making export rates through the port of New York. After a full investigation of the evidence and questions involved, the Commission decided that the difference made by the carriers between the proportion of the through rate from the interior points to New York on export traffic destined to foreign countries, and the rate charged contemporaneously on the like kind of traffic from the same interior points destined to New York, was not justified by any circumstances tending to show that it was just and proper, and further decided that it was an unjust and unlawful discrimination against the transportation terminating at that port.

The Commission further held that, under the amendments of March 2, 1889, to the statute requiring ten days' previous notice of advances and three days' previous notice of reductions in rates, they can not be varied from day to day, or oftener, to meet fluctuations in ocean rates. It was further decided by the Commission in that proceeding, that the only practicable mode yet devised for making through export rates on shipments from the interior through that port, as has appeared by past experience, is to add to the established inland rates from the interior to the seaboard the current ocean rates, and that the published tariffs of the carriers should show the rate charged by the inland carrier or carriers to New York on freight billed or intended to be billed for export, including all terminal charges and expenses, and should also show in what manner the through rate to the point of ultimate destination is to be determined, whether by the addition of the ocean rate from time to time prevailing, or how otherwise.

On the 8th of March, 1889, the Commission summoned each of the railway carriers composing what is known as the Trunk Line Association to appear before the Commission on the 16th of that month, for the purpose of showing what their export rates were, and how these export rates were made by each of them, and also to give these carriers an opportunity to be heard concerning the manner of making and publishing said rates in order to comply with the provisions of the Act to regulate commerce, as amended March 2, 1889. At the time appointed these carriers appeared before the Commission, and after an elaborate investigation it appeared that all of them, except a few, found no difficulty in publishing their joint tariffs, as required by the amended statute.

Subsequently, on the 23d of March, 1889, the Commission made a general order in reference to the publication, under the amendment of March 2, 1889, of the Act to regulate commerce, of advances and reduction in joint rates, fares, and charges, in which, among other things, it was stated that the Commission understands that tariffs now on file in its office, established by carriers accepting merchandise billed or

intended for export by sea, are made in compliance with its order of the date of March 8, 1888, and whether they be individual or joint tariffs, the requirement of notice of any change therein is the same as in the case of other tariffs, and that imported traffic transported to any place in the United States from a port of entry or place of reception, whether in this country or in an adjacent foreign country, is required to be taken on the inland tariff governing other freight.

After the publication of this last order a large number of interstate carriers in the States south of the Potomac and Ohio rivers requested an opportunity to be heard before the Commission in regard to the application of this general order to their export traffic. Accordingly notice was given to them to appear, and they appeared before the Commission in a general conference in regard to this matter.

In this conference it appeared that the principal article of export to the various southern ports reached by these carriers is cotton, though there were exports of tobacco and some other commodities, and that the circumstances and conditions that had most influence in affecting rates and producing frequent fluctuations that interfered with the stability of the inland tariffs was the vessel service at the southern ports. It was claimed by these carriers that the vessel service at the trunk line ports being more ample, no material difficulty was found in the transportation of exports to the seaboard at the established tariffs, but that the vessel service at the southern ports being more limited, it had been necessary to apply various methods to secure ocean carriage for export business. On account of the scarcity of sea-going vessels at these southern ports, it was claimed that this gave rise to irregularity in rates, from the fact that in the absence of competition vessels were largely able to exact terms to suit themselves, and the fluctuations in ocean rates affected the stability of the railroad proportions of the through rates; and ocean service in such cases, it was claimed, must in general be procured by charter at a round sum by contract for their tonnage capacity, with guaranty of a cargo, or by some form of subsidy.

The real difficulties in the way of maintaining fixed inland

rates on export traffic under such conditions, it was claimed, were very great, if not insuperable, and that the inland rates became subject to the varying condition of the ocean carriage. When a ship is procured at such a port by charter or any of the other methods named, it becomes necessary to furnish a cargo as speedily as possible in order to save charges for demurrage, and the consignment of this freight is hastened to the port to fill the vessel quickly, and even taken at a reduced through rate, in some instances shrinking considerably the inland proportion, and the same vessel frequently carries the same kind of goods at many different rates.

In consequence of these conditions, a method came into use, and has prevailed over a large number of the Southern States, of an export rate made every day to be in force as to export rates for the succeeding twenty-four hours, based on the vessel facilities in the southern ports and their ocean rates, and on the lowest combination of the inland and ocean rates from the interior point of shipment to the foreign market on a through rate made up in this manner. The through rate thus made has no reference to the established inland rate for consignment at the seaboard, and this method, it was claimed, had worked satisfactorily, had produced no friction or competitive contentions among the rail lines, and was maintained by all of them.

The ports at which the conditions described are claimed to exist are all Atlantic and Gulf ports, from the Chesapeake Bay to those in Texas, and the property upon which the rates are affected by these conditions is chiefly cotton, although they apply to some extent to tobacco. Cotton formerly had its chief outlets for export through New Orleans and Mobile; it also went to a considerable extent through Savannah and Charleston. The enlargement of the territory in which cotton is produced, and the greatly increased rail facilities over which it is transported at low rates have materially changed former conditions, and cities and towns in the interior, like Memphis and others, have become points of shipment on through bills to foreign countries, and a large proportion of the product is shipped in that manner.

There was evidence tending to show the existence of the claims thus insisted upon by these carriers, while, on the other hand, some of the roads in Arkansas and Texas found no difficulty in maintaining rates for ten days, and that the law requiring notice of ten days for advances and three days for reductions could be complied with without detriment to their business. But the investigation was not completed for causes hereinafter stated.

On this account, and in view of the fact that the Commission had recognized that there might be substantially different conditions and circumstances affecting export traffic in different parts of the country, as was indicated by the decision of the Commission in the case of the port of Boston above mentioned, the Commission has not yet made any decision in regard to the Southern export traffic, but has waited until there could be further investigation and consideration of that subject. The local consignments of cotton to these Southern ports were small as compared with the through export traffic, and no complaint whatever had been made against the difference in these rates. Further investigation of it was a matter, therefore, of far less importance than many others which were pending, and which since then have continually engrossed the attention of the Commission; and for want of time originating from these causes this investigation has not been completed. It is not apprehended that this adjustment will be attended by the difficulties that many of the carriers imagine. No opinion in regard to it is now expressed by the Commission for obvious reasons plainly indicated by the facts stated. At the same time, it is deemed proper to lay the substance of the evidence thus taken before Congress in this annual report.

Questions arising in regard to export rates are and must continue to be of very great importance, and often extremely embarrassing until this subject is finally determined and settled at ports upon the different coast lines of the country. Thus far no question of this kind has come before us as to export traffic going through the ports on the Pacific slope, in which there is indeed a large and growing commerce.

If the statute should expressly provide that the published

tariff rate from interior points to sea-ports must be the same whether the property transported is for local delivery at such sea-port or for the purposes of export from such sea-port, leaving the rates from such port to the foreign destination to be such as the unrestrained competition of vessels might settle, then there would be no more difficulty in regulating inland transportation of property to a sea-port for the purposes of export than there would be in the case of domestic traffic. The difficulty in its regulation under the statute at present arises in cases where a through rate is charged from the interior point of shipment through the port of trans-shipment to the foreign market, made sometimes as a gross through rate, but most usually as a through rate in which the inland rate is added to the prevailing ocean rate.

In either event, as the ocean rates daily and often hourly fluctuate in the competitive strife of vessels, and are subject to no regulation whatever, the inland or rail proportion of the through rate has no fixed stability, but fluctuates with the ocean rates, and by manipulation of the vessel rates a margin may be created for preferential rates and secret arrangements for the benefit of individuals or of traffic by which the law can easily be violated without detection. At the port of New York the Commission met this, as far as possible, by requiring that inland rates of rail carriers to that port should be the same on traffic for export as on that intended for local consignment there. And at New York, as well as other ports, the Commission met this, as far as possible, by requiring the published tariffs of the rail carriers to show the proportion of the through rate from the interior points of shipment to the port of trans-shipment. But as remedies these are not sufficient to adequately check the evils we have enumerated. Whatever the rule of the statute is to be upon a subject like this should be indicated in plain and unmistakable terms. Whether that rule as above made at the port of New York shall be the same for all the ports of the country, namely, that the proportion of the inland rate on export traffic shall not be less than the inland tariff rate to the port of trans-shipment on traffic not for export, or whether the law shall be held flexible as to the modes of business of carriers at

some of these ports under the conditions by which they are surrounded, or what the rule shall be upon the entire subject, is respectfully submitted to the wisdom of Congress, to determine now or after further investigation and report of the Commission in the future.

THE RELATIONS OF LAKE AND RAIL TRANSPORTATION.

When the Congress was given power to regulate commerce among the States, railroads had no existence. To whatever extent the regulation so provided for was intended to include transportation or transportation charges, it must have had special reference to the then existing transportation methods, which were mainly by lake, river or coastwise carriers.

The regulation for which provision is made in the Act to regulate commerce does not apply to commerce as it was conducted when the power to regulate was conferred. The Act applies to water transportation only when "used under a common control, management or arrangement for a continuous carriage or shipment" in connection with a railroad and as part of a line or route of which another part is a railroad, and leaves carriers engaged in transportation wholly by water independent of regulation.

The exemption of so considerable a part of transportation from the operations of the law is a serious hindrance to the regulation of that which the Act includes.

The construction and maintenance of the way or track is a principal item in the cost of railway transportation, while the permanent way over navigable waters is free from expense or is maintained at public cost. In water transportation, carriers provide only the vessel or vehicle of carriage. There is therefore a wide difference in the cost of rail and boat service, and water transportation charges can be very much the lower and be remunerative.

Carriers by water are not required to publish rates, and are under no restrictions as to rebates, discriminations, or as to charges proportioned to distance. No stability is required in their charges, which may fluctuate as often as the exigencies of business rivalries dictate or the necessities for traffic

render expedient. Whenever rail and water transportation are in direct competition, a reduction of rail rates to meet the water charges is regarded as essential to secure any part of the traffic. Independent or unregulated water transportation in parts of the country is so influential in many ways as to be the cause of demoralization in rail rates as well as to afford the basis of inequalities between localities having the appearance of unjust preference.

These are some of the effects of unregulated water transportation. Its usefulness must not be in the least impaired, but it is both expedient and just that it should be so far regulated as to prevent its demoralization of other transportation. This requires carriers by lake, river and coastwise to publish and maintain tariffs as do carriers by rail, and be alike subject to the general provisions of the Act.

Only one of the five great lakes on our northern border is wholly within our territorial limits, but upon all the fluctuations of unregulated rates and charges are so frequent as to create confusion and uncertainty in charges on railroad traffic. The "trunk lines," or railroad carriers from the lakes to the Atlantic coast, own and control eighty or more boats, with an estimated tonnage capacity for the season approximating 200,000,000 tons. These boats are used in connection with the roads and under a common control or management for continuous carriage or shipment from Chicago, Duluth and other western lake ports to tide-water at New York, Philadelphia and other eastern cities. These continuous carriers, lake and rail, are thus made subject to the Act and required to publish their rates and charges, together with proposed increases or reductions. Some of the roads west of the lakes are operated in connection with boats under a common control for continuous shipments to Buffalo, Erie and eastern lake ports, thus forming a line, part rail and part water, subject to the Act.

In addition to the boats used in through transportation in connection with the roads and subject to the Act, a large part of the lake transportation is by independent transit companies or individual and separate vessels not subject to the Act. Two or more of the roads which carry between lake ports and tide-water cities are each wholly within one State,

and when carrying locally between points in the same State from lake to sea are not subject to the Act.

The carriage of products is large from lake ports in Minnesota, Wisconsin and Illinois to sea-going vessels at Montreal by lake, canal and river, all independent of regulation. Transportation part rail and part water, not subject to regulation, is conducted by lake boats, in connection with Canadian roads or roads partly in Canada, from western lake ports to eastern lake ports in the United States and in Canada.

Boats cross the lake in three or four days. They carry package and general freights, but the tonnage is largely grain, flour and provisions—very largely bulk grain. In a recent investigation it was claimed on the authority of the Chicago Board of Trade reports, that of 47,000,000 bushels of corn shipped east from Chicago last year 7 of every 10 were by lake.

The customary lake and rail rates from Chicago and western lake ports to New York and other eastern sea-port cities are about one-fifth lower than the all-rail rates. While that relation is maintained the rates are considered regular. When agreements to maintain rates have been made between all-rail and part rail and water carriers, it has been usually on something like that basis. This conceded difference in rates indicates the estimate of the advantages of rail shipments and of the lower cost of lake transportation.

Under the present state of the law, products may be carried from States west of the lakes to Montreal and other Canadian ports, as also to New York and Philadelphia, for consumption, distribution or export, by routes so free from all regulation, that carriers over regulated routes may not know the rates with which they must compete. Grain can be shipped from western Minnesota over a road wholly within that State to the lake, over the lakes to Buffalo, and from thence over a road wholly within one State to the sea-board. It can be shipped in the same way to and across the lakes to Erie, Pa., thence to tide-water at Philadelphia, the carriage in both cases, when not under a common arrangement, being free from regulation. The all-rail carrier of freight between

the same places must conform to the provisions of the Act on every one of the 1,500 miles over which the freight must pass.

A very small reduction in regular rates by lake or rail carriers not subject to regulation is sufficient to divert traffic from the lines of rival carriers by lake or rail, or both combined. Such reductions need not be published, but may be, and are, made without notice to competing carriers required by the Act to publish their rates and any intended reductions. To carriers finding their business so diverted the temptation is strong to recover a share of the business, frequently stronger than the restraining provisions of the law, which does not apply to their competitors and rivals. The result is disturbance and disorder in railroad service, with uncertainty, instability and inequality in rates and charges.

RAIL TRANSPORTATION NOT SUBJECT TO THE LAW.

In former reports the Commission has called attention to the fact that not all transportation by rail is made subject to the Act to regulate commerce. The Act carefully limits its operation to certain specified carriers, and the terms are such as are believed not to include the express companies regarded as common carriers. Carriers exclusively by water are also omitted. These omissions extend to a considerable part of the internal commerce of the country, and must therefore prove to some extent an embarrassment in the enforcement of the Act. This subject, having been sufficiently covered by what has been said heretofore, is alluded to in this place only for its bearings upon what will be said in this connection regarding transportation by rail by those carriers not made subject to the Act. Independent water transportation is treated elsewhere in this report.

As regards transportation by rail by carriers not subject to the Act, it is proper, in the opinion of the Commission, that a free and full expression of the embarrassments attending their exclusion should be placed before Congress. This is not done for the purpose of asking any additional or different legislation from what now exists, but only that the subject may be fully understood in relations not hitherto explained.

The Constitution of the United States, in Section VIII of Article I, provides that the Congress shall have power "to regulate commerce with foreign nations, and among the several States, and with the Indian tribes." No question, therefore, can arise of the authority of Congress to make its legislation as broad as the power itself. In undertaking the regulation of commerce by rail, legislators, both State and National, have been dealing with a subject that in many respects was so different from any other with which they have occasion to deal, that the ordinary rules and analogies could not possibly be applied to the full extent; every step taken has been persistently opposed by the interests to be affected; and it has been universally felt that the legislation hitherto adopted could not in all respects be final, but has been rather initial, and, though important and in the right direction, constitutes only steps towards an ultimate solution of what is commonly spoken of as the "railroad problem." No one who has given proper thought to the subject now deems that problem fully solved; every one who has studied it candidly sees that further action in the line of the existing statute is necessary for the purposes of a complete solution.

When the Act to regulate commerce was adopted there were in many of the States and Territories laws for the regulation of State and Territorial commerce by rail. These laws preceded any action by the General Government on the subject, and in many respects, unquestionably, there has been useful State and Territorial regulation. There is no doubt in the minds of the Commission that very valuable service has been performed by these State and Territorial boards under the laws conferring powers upon them. In some cases the benefits have been universally acknowledged, and in others, where complaints have been made against them, it is probable that these have been exaggerated and sometimes unfounded. When the Act was passed Congress was very careful not to interfere with the working of these commissions, and shaped its legislation so as to leave a clear field for action to the State and Territorial authorities. No doubt this was in part from a recognition of the valuable work these authorities had performed. It may also in part have come

from a well-founded belief, in which this Commission fully shares, that no single body of men, acting as a national commission, could, with any strong probability of success, undertake the regulation of commerce by rail for the whole country without the assistance of State or other local commissions or boards. There may likewise have been constitutional considerations. But whatever the motives were, it is plain that the Act to regulate commerce falls short of completely covering the field of regulation.

The railroads of the country do not constitute one separate national system and separate State and Territorial systems operating independently of each other. There are a great many railroads in the country that do not extend beyond the limits of a single State, but there are very few of them that are not by affiliation and at least partial control connected with roads that are interstate. It is doubtful if there is a single railroad in the country that does not to some extent participate in interstate traffic, and which, if left to be a law to itself, or subjected to laws which differ from the Act to regulate commerce, may not be a disturbing element in the enforcement of that Act. There is no such thing as a complete and harmonious regulation of interstate commerce by rail when a part of the carriers by rail are governed by one set of laws and other parts are left to the regulation of laws which are materially different. Still less can there be complete and harmonious regulation when even upon interstate roads there is regulation of a part of the traffic by one set of laws and another part by another materially different. An interstate road takes little or no notice of State lines in the management of its business. State traffic and interstate traffic are taken upon the same trains, under the same management; the freight and passage moneys are received into the same treasury; the expenses of transportation are paid by the same officers, from the same fund; and it would be impossible for the officers of the road to determine with accuracy the cost or the profit of the State business as distinguished from the interstate.

The State regulation, unless the State law should be substantially identical with the Federal law to regulate commerce

in all essential points, would, of necessity, if enforced, constitute to some extent a regulation of the interstate traffic. State rates must often necessarily affect interstate rates. The State rate from East St. Louis, for example, to Chicago might affect the interstate rate to Chicago and to Milwaukee as well; and it might affect the interstate rates to all towns that to any extent are the competitors of Chicago in the traffic to which they relate. Indeed, to some extent it might often affect rates from the Missouri river to the Atlantic seaboard. State regulation in regard to safety appliances might, if enforced, constitute a regulation of interstate traffic to some extent, unless the railroads were required to separate in their trains all State from interstate traffic; but this could not be done without greatly increasing the present cost of rail transportation. We shall not take the space to multiply instances here, though we might give them in great number, to show how State regulations might enter and occupy the sphere of Congressional power. One illustration in this connection, however, we deem it proper to mention.

The Act to regulate commerce was intended to bring to an end the gross abuses attending the free transportation of persons. To a considerable extent it has done so. But very largely the carriers, and especially the strong systems, where the abuse has been greatest, have endeavored to avoid the law by falling back upon State protection, and shielding themselves under an unrestricted authority to issue passes as they pleased within the limits of a single State. Three of the large railroad systems of the country, when called upon by the Commission to make an exhibit of the passes issued by them, declined to do so, on the ground that the passes issued were limited in their operation to the bounds of a single State, and therefore, as was claimed, this Commission could take no cognizance of them. The Commission believes that if this position can be maintained it greatly impairs the efficiency of the law, and the abuses, the discriminations, and the corruptions which before were so flagrant will, to some extent at least, continue. If the New York Central or the Pennsylvania Railroad Companies can thus issue passes at discretion, it is impracticable to enforce

the law as against their competitors. It is idle to say the passes do not affect interstate traffic. There is generally some purpose of indirect profit or advantage in issuing them, and the managers of the roads who make the issue do not attempt to limit the benefit to any one class of the traffic, and could not if they would. And if they in this manner avoid the law, it can not be effectively enforced against their competitors, even if the latter did not dispute their obligations to comply with it strictly.

What is said as to free transportation may be said as to rebates also. Sometimes in cases which come before the Commission, a carrier admits that it gives rebates on the traffic taken up and laid down within a State, but insists upon its right to do so, because there is no law of the State prohibiting it. Nevertheless, this rebate affects the rates upon interstate traffic, and a competing road whose traffic is taken a little further, and over the State line, may be compelled to give rebates accordingly, or to surrender important business. It certainly can not be expected to surrender the business willingly, and while the State law permits the rebate the interstate carrier will see no moral wrong in giving one also. Indeed, it may be said that in all particulars where the Act to regulate commerce contains prohibitions, or establishes penalties which do not exist under State laws for corresponding conduct, the interstate carrier is tempted to find excuses for violations and evasions under shelter of the less stringent State laws.

By reference to the brief notice of the meeting with State railway commissioners, which will be found in another part of this report, it will be seen that the State commissions have felt the great difficulties attending the want of entire harmony between State and national laws, and a committee of five State railroad commissioners was then appointed to consider the subject and report to the next conference upon the best plan to obtain harmony in railroad legislation. The time has not yet been fixed for the meeting of the conference to which that committee will report, but it will probably be held next spring. The bringing about of that harmony by a substantial re-enactment of the Act to regulate com-

merce by all the States and Territories would to a large extent relieve the whole subject of the difficulties at present attending it, and would go very far towards a solution of the railroad problem. Possibly such a re-enactment may in time occur, but we have deemed it our duty at this time, and as accounting in great part for any imperfect execution of the law, to bring to the notice of Congress some of the difficulties necessarily encountered by reason of the fact that the Act to regulate commerce does not cover the whole transportation business of the country. A statement showing State roads that claim they are not subject to the Act, and therefore not required to report to the Commission, is given in Appendix 9.

CONSOLIDATION—ABSORPTION OF WEAKER LINES BY THE STRONGER.

The tendency in recent years towards the aggregation and combination of capital invested in various of the larger business pursuits has been so marked—such aggregations are so subject to misuse, and when misused are so potent for mischief—that every new indication of the growth of this tendency leaves the public less free from apprehension. This is so true as to all transactions between railroad corporations that any working arrangement or agreement for the establishment of through lines, by which expenses may be avoided and the public served, is subject to more or less distrust.

Whether because of some abuses in railroad management when in conducting interstate commerce the carriers were a law unto themselves, or whether for some other reason, the fact seems to be that every railroad combination in the direction of unity of interest or unity of control provokes such suspicion as to warrant, if it does not require, explanation.

The tendency to consolidation of railroads and to the absorption of the weaker by the stronger lines has been sometimes ascribed to the Act to regulate commerce or some of its provisions. It has been so ascribed by those of such experience as to entitle their opinions to consideration.

The tendency to the combination and concentration of other great interests is scarcely older than the Act to regulate commerce, to which such interests are not subject.

Combinations and unifications of railroad properties had their origin as early as railroad investment was of sufficient magnitude to invite them. They had so advanced when the Act was passed that the railroads outnumbered the companies operating them two to one. Both before and since the Act was in force the tendency to such combination and unity has kept well up with the increasing ability of the proprietors and managers of one road to buy or control another.

With an average annual railroad investment approximating \$400,000,000, and a corresponding increased railroad mileage, there are each year more roads for consolidation, increased opportunities for absorption, new and greater inducements for combination. Yet the proportion of combinations effected was greater before than after the Act. Considered separately for the period of nine years since the last census, the number of roads merged annually in the seven years before the Act was nearly double the number annually merged in the two years thereafter. The combinations for these nine years, and how effected, appear in the following statement, which, with the subsequent statements, is taken from the best obtainable data:

CONSOLIDATIONS, ETC., TO DECEMBER 31, 1888, OF ROADS THAT WERE OPERATING COMPANIES ON JUNE 30, 1880.

How acquired.	1880.	1881.	1882.	1883.	1884.	1885.	1886.	1887.	1888.
Consolidated, absorbed and merged.....	33	53	11	9	7	5	9	9	7
Controlled, leased and operated.....	69	28	40	22	12	23	12	15	21
Purchased.....	13	8	3	5	1	2	2	2	4
Total.....	115	89	54	36	20	30	23	26	32
Re-organizations and changes in name.....	7	7	4	3	5	5	12	11	3

RECAPITULATION.

Total for nine years.....	425
Average per year.....	47
Total for seven years preceding 1887.....	367
Average per year.....	52
Total for two years (1887 and 1888).....	58
Average per year.....	29
Total for three years (1880, 1881 and 1882).....	258
Average per year.....	86

Total for three years (1883, 1884 and 1885).....	86
Average per year.....	28
Total for three years (1886, 1887 and 1888).....	81
Average per year.....	27

The latest union of railroad interests which has attracted public attention, and of which this Commission has been advised, is that of the Union Pacific with the Chicago & North-Western. This alliance is an agreement for the interchange of through business, the establishment of through lines by which the interests of the companies may be promoted, and the public convenience served. It provides for the interchange and continuous carriage of freights from the place of shipment to the place of destination over 5,000 miles and more of the Union Pacific system, and more than 4,000 miles—all—of the Chicago & North-Western system. The arrangement as to through carriage and interchanges for that purpose does little, if any, more than give effect to one purpose of the law. Such a continuous carriage is favored by the third and seventh sections of the interstate commerce Act. Except as to interchange of business and continuous carriage the two companies and systems seem as free from the control of each other as before such union.

Substantially all the consolidations and absorptions made by the two companies or systems preceded the Act, or resulted from contracts which preceded it.

The authorized mileage of the Union Pacific proper, as constructed, was less than 2,000 miles, which was increased to more than 6,000 miles through its affiliated and controlled lines.

The Chicago & North-Western acquired and commenced operating 119 miles of road at the date of its organization in 1859, and had less than 500 miles in 1866. By absorption, purchase, or otherwise, it had acquired control of more than 3,500 miles in 1886.

The Pennsylvania Railroad Company, a corporation of that State, authorized at first to construct a road less than 250 miles long, between two of its principal cities, grew into a vast system, extending into and across several States of the Union. Its entire mileage, including main and branch,

owned and leased lines, was less than 500 miles in 1861. In 1880 it included nearly 4,000 miles. In every year since then it has added to its mileage not more annually after than before the Act. By extension, purchase, absorption, or other arrangement, its control, directly or through affiliated companies, embraces more than 7,000 miles.

The progress made by the two companies or systems last named, in acquiring control of roads of other companies and increased mileage, is indicated in the following statement :

SUMMARY OF NUMBER AND MILEAGE OF ROADS OF PENNSYLVANIA SYSTEM ACQUIRED, IN YEARS INDICATED, TO JUNE 30, 1889.

(Roads omitted for which proper data are lacking.)

Year.	Pennsylvania Railroad.*		Pennsylvania Company.†		Total‡	
	No.	Miles.	No.	Miles.	No.	Miles.
Prior to 1880.....	26	\$1,158.87	18	\$2,614.30	44	3,773.17
1880.....	2	111.54	2	243.15	4	354.69
1881.....	1	47.82	..	.....	1	47.82
1882.....	3	181.48	..	.....	3	181.48
1883.....	1	6.75	..	.....	1	6.75
1884.....	3	99.40	..	.....	3	99.40
1885.....	2	128.36	1	28.15	3	156.51
1886.....	3	60.26	..	.....	3	60.26
1887.....	2	14.24	1	122.08	3	136.32
1888.....	2	115.57	2	67.53	4	183.10
1889.....	4	7.95	..	.....	4	7.95
Total.....	49	1,932.24	24	3,075.21	73	\$5,007.45

SUMMARY OF NUMBER AND MILEAGE OF ROADS OF CHICAGO & NORTH-WESTERN RAILWAY COMPANY ACQUIRED, IN YEARS INDICATED, TO JUNE 30, 1889.

(Roads omitted for which proper data are lacking.)

Year.	No.	Miles.	Year.	No.	Miles.
1864.....	3	486.70	1884.....	11	2,063.02
1867.....	1	105.00	1885.....	..	.....
1871.....	1	48.80	1886.....	..	.....

* The charter (1846) authorized the construction of a road from Harrisburg, Pa., to Pittsburgh, Pa., the length of which, when completed, was 248.2 miles; the first section from Harrisburg, Pa., to Lewistown, Pa., 60.6 miles, was opened September 1, 1849. Mileage owned and controlled June 30, 1889, approximately, 4,113.75.

† Mileage in 1871, the year of organization, 796.20. Mileage June 30, 1889, approximately, 3,381.27.

‡ Total mileage owned and controlled by Pennsylvania system June 30, 1889, approximately, 7,495.02.

§ Subsequent to 1860.

! Subsequent to 1868. Includes ten roads, 1,556.25 miles; controlled through ownership of stock ; no information as to date acquired.

1877.....	1	28.00	1887.....	5	109.40
1880.....	2	72.72	1888.....	2	79.64
1881.....	.	.....	1889.....	2	41.16
1882.....	3	487.44		—	—
1883.....	4	190.03	Total.....	35	*3,731.91

What is said of the Chicago & North-Western and of the Pennsylvania may be said of the Louisville & Nashville, the Lake Shore & Michigan Southern, the New York Central, and is substantially true of the railroad system of this country as well as of other countries. Railroad consolidations and combinations first challenged public attention in other countries, where they were the cause of great apprehension. Twenty years ago they were made the subject of investigation by a royal commission in England.

In view of the facts, it would seem that the cause for railroad consolidations must be looked for elsewhere than in the restrictive provisions of the Interstate Commerce Act, while it is suggested with much reason that these restrictive provisions are themselves the result of behavior in railroad management.

The Act, in its main provisions, declares in substance that:

To be lawful, charges for railroad services must be reasonable and just.

To take a greater or less compensation from one person than from another for a like service is unjust discrimination and unlawful.

To give unreasonable preference to persons, localities, or kinds of traffic, to the disadvantage of other persons, localities or kinds of traffic, is unlawful.

To make the greater charge for a shorter distance transportation service lawful there must be exceptional circumstances which make it just.

Combinations, contracts, and agreements between different and competing roads for pooling their freights or dividing any part of their earnings is unlawful.

* In addition to what appears in table, it should be stated that this company owns stock of the Chicago, St. Paul, Minneapolis & Omaha Railway Company, 1,310.52 miles, to the amount of \$14,700,000, in total stock of \$34,050,126.66, over \$10,000,000 of said owned stock having been acquired in 1882. Mileage of Chicago & North-Western Railway Company at date of organization, June 7, 1859, 119.80; mileage owned and controlled June 30, 1889, 4,250.88.

To be lawful, schedules of fares and charges, as well as of increases and reductions in fares and charges, must be posted and kept open to public inspection.

Combinations, contracts, agreements, or devices to prevent the carriage of freights being continuous from place of shipment to place of destination, are unlawful.

A provision of the third section of the Act declares :

Every common carrier subject to the provisions of this Act shall, according to their respective powers, afford all reasonable, proper, and equal facilities for the interchange of traffic between their respective lines, and for the receiving, forwarding, and delivering of passengers and property to and from their several lines and those connecting therewith, and shall not discriminate in their rates and charges between such connecting lines.

Of the restrictive and chief provision of the Act given above, that which makes the pooling of freights and the division of earnings of competing lines unlawful is usually credited with being the efficient cause as well of objectionable railroad consolidations and absorptions as of hurtful instability of fares and charges. It is so credited on the assumption that hurtful competition, especially between stronger and weaker lines, can only be prevented by the pooling of freights, the division of earnings, and the guaranties to be secured through such poolings and divisions. Weaker lines are indirect lines, longer lines, and lines requiring more time and affording inferior facilities and accommodations. Previous to the enactment of these restrictive measures prohibiting pooling and the division of freights and earnings of competing lines, it was, in consideration of the maintenance of agreed fares and charges between the stronger and weaker lines, the practice of the stronger to guaranty to the weaker an agreed division, share, or proportion of business. When shippers patronized the stronger lines at the agreed rates to such extent that the weaker lines failed to obtain their conceded share of the business and earnings, the stronger lines accounted for and made good the deficiency from their own receipts. On the assumption that the agreed rates were no more than reasonable, the amount realized by the stronger lines was less than reason-

able compensation for their services to the extent of such deficiency. But it being assumed that reasonable compensation for the transportation services they rendered remained to the stronger lines after making good the guaranty to the weaker, the amount necessary to make good such deficiency was necessarily derived from charges in excess of such reasonable compensation. In this view the practice was interpreted as resulting in excessive charges on shipments made by the public as a means of paying weaker lines for joining the stronger in maintaining exorbitant rates. So interpreted, the practice, or guaranty based on agreed divisions of business, was condemned and prohibited by the Act to regulate commerce.

This provision of the Act making it unlawful to divide business or earnings, deprived the stronger lines as well of the ability as of the legal right to guaranty to the weaker lines a conceded share of business when the guaranty could no longer be made good from charges regarded as excessive.

CONSOLIDATION—INTERCHANGE OF TRAFFIC.

For any advantage of which the roads were deprived by these restrictive provisions, it is believed an equivalent was intended to be given in the equal facilities for the interchange of traffic and for receiving and forwarding persons and property under the above-cited provision of section 3 of the Act.

Since its last annual report to the Congress the Commission has made investigation of a complaint under this provision of section 3 of the Act, made by the Little Rock & Memphis Railroad Company against the East Tennessee, Virginia & Georgia Railroad Company, and the Iron Mountain & Southern Railway Company.

The western terminus of one line of the East Tennessee, Virginia & Georgia Railroad Company is Memphis, Tenn. From Memphis the road of the Little Rock & Memphis Railroad Company extends to Little Rock, Ark. From Little Rock a division of the road of the St. Louis, Iron Mountain & Southern Railway Company runs to Texarkana and other points in Texas and the Southwest.

These companies had, previous to June, 1888, established and until then maintained, a through line over their several roads or lines, for the transportation of persons and property from and to points on the lines of said companies, or any of them, and connections in the States west of the Mississippi river to and from points on said companies' lines and connections east of the Mississippi. When, in June, 1888, said Iron Mountain Company had constructed and completed a line of its own from Little Rock to Memphis, it would no longer maintain the through line over the road of the Little Rock Company; but, claiming that the public could be well served over a through line from Texas and points west to Tennessee and points east, of which through line its own line from Little Rock to Memphis should be part, the Iron Mountain Company insisted on the substitution of the Little Rock & Memphis section of its own line for the line of the Little Rock Company.

The East Tennessee, Virginia & Georgia joined the Iron Mountain Company in establishing such a through line, and thereafter both refused to interchange with the Little Rock Company traffic passing over it and destined to points on the through line they had maintained with it previous to June, 1888.

The Little Rock Company complained of this as a refusal to afford it the equal facilities for the interchange of traffic which it alleged to be its lawful right under said provision of section 3 of the Act, and insisted that the other companies should afford it facilities equal to the facilities they afford each other, and for the same equal rates and charges.

On investigation, the Commission found the through line or route of which the Little Rock & Memphis Company's line had been a part, to be more direct and shorter than that substituted for it, that it was a reasonable and convenient route, and its re-establishment would be in the public interest. Its discontinuance by the other companies subjected the public to increased cost and greater delays in transportation. Their refusal to continue or re-establish it, while they maintained another through line from and to the same points, was a denial of proper and equal facilities for the

interchange of traffic, for receiving, forwarding, and delivering passengers and property, and a discrimination in rates and charges between connecting lines. The opinion of the Commission expressed the belief that under such conditions it was the intention of the Congress, in the third section of the Act, to secure to the Little Rock & Memphis Company, or other companies under like conditions, the proper and equal facilities so denied, by providing for the establishment and maintenance of through lines over connecting lines without discrimination in rates and charges as between such connecting lines; but the Commission held that when, as in this case, the companies having connecting lines objected to forming through lines with another company, some method of procedure was necessary to establish such through line and fix the terms upon which it was to be maintained, and the Act provided no procedure to fix such terms or by which such through line could be established.

The omission to make legal provision for through lines limits transportation over the line of the Little Rock & Memphis Company to local traffic. This results primarily from the construction of a line between Memphis and Little Rock by the Iron Mountain Company, when the line of the Little Rock Company was ample for the traffic, through as well as local. The Iron Mountain Company now has substantially all the through business. The business of the Little Rock Company had been largely through traffic, without which the local business was, and still is, insufficient for the successful operation of its road. To obtain through business under the present state of the law, the company must extend its line from Little Rock to Texas and southwestern territory already reached and adequately served by the Iron Mountain line. A necessary result would be the support and maintenance of two roads where one is ample for the traffic, and can render the service with more profit to the carrier and lower cost to the public. A result not unheard of would be a hostile and possible disastrous competition between the companies to be followed by an alliance hostile to the public.

Should the Little Rock Company, in view of necessary or possible results, find itself unable or unwilling to so extend

its line, it must await the development of a traffic merely local and yet inadequate to the suitable and proper maintenance of its road, or submit to the absorption of its line as an affiliated line or feeder to a stronger line.

The status of the Little Rock & Memphis Railroad Company in its relations to connecting lines and the results of such relations is sufficiently explanatory of the status and relations of all other independent roads, or roads of a local character, in respect of their relations with connecting lines, which are the same as they were before the Act to regulate commerce.

COMPLAINTS AGAINST THE WORKINGS OF THE LAW.

In some cases within the year complaint has been publicly made by manufacturers or other large dealers whose business has not been satisfactorily profitable, that the fact was due wholly or in part to the Interstate Commerce Law, which was wrong in theory, because it took from the carriers the power to sell their services at pleasure. Such a complaint is aimed at the vital principle of the law; it does unquestionably take away from the carriers the power to sell their services at pleasure and require them to perform service for all persons, trades, occupations, localities and communities with entire impartiality. It was chiefly because they formerly, in selling their services at pleasure, discriminated grossly, generally in favor of large dealers, that the Government interfered. Common justice required the interference. The discriminations were sometimes so great that the difference in the rates paid by two dealers sharply competing in the same line of business were sufficient to make the one prosperous and send the other to bankruptcy; and as, in the bargain for services the larger dealer always had the most to offer, it was the smaller dealer that was commonly pushed to the wall; so that the sale of their services at pleasure by the carriers was continually adding to the force of other circumstances which, without regard to merit or ability, were assisting to make the rich richer and the poor poorer. It was the belief of Congress that, in so far as the requirement of impartiality in the service of carriers by rail would have that

effect, this tendency should be checked; and the law being just in itself the complaint of a dealer that it takes away his ability to build up a prosperity on the special bargains he could make with carriers is a compliment to the law, not a reproach.

Other complaints have occasionally been made, traceable to a discontinuance of methods or practices intended to be corrected by the law. Quite naturally the law will be complained of by any interest that has profited either by sharing the earnings of the railroads or by any special advantages. Such interests have much at stake and are therefore desirous to be let alone. The law is looked upon unfavorably when it interferes to protect the public directly by its prohibitions, or indirectly by liberating carriers from injurious methods. The primary purpose of the law doubtless is that the service of the public by the carriers shall be just and impartial. But that is not all. It contemplates that carriers shall free themselves from burdens that diminish their capacity for cheaper and better service to the public. An enumeration of these includes ticket brokers, commissions to ticket agents and to freight solicitors, special cars owned by shippers or by private car companies, with payment of excessive car mileage, adjunct properties of doubtful value owned or invested in by managers, service for express companies, free transportation of persons, and others that might be named.

Complaints that have their origin in a misuse of corporate powers, or practices injurious to carriers or to the public, are not arguments against the propriety of the law. Railroads are public instrumentalities, and the public is concerned in the manner in which their affairs are managed, as well as the service they render. As common carriers they are expected to supply suitable and adequate accommodations for the business on their lines, and to so perform their service as not to afford preference to some nor cause prejudice to others. They are expected to do their business with their own corporate agencies, and not to delegate their duties to independent and often irresponsible parties acting as middle-men between the carriers and the public. For continuous carriage by connecting routes all reasonable facilities

are expected to be afforded. In short, railroads, as the necessary highways of the country, are expected to keep in view the purpose for which their franchises were granted, and, while guarding their revenues with fidelity to their corporate interests, to make the public service their constant aim, and to so manage their affairs that the service shall be impartial and reasonable.

FEDERAL REGULATION OF SAFETY APPLIANCES.

Personally concerned as every man is in the safety of travel, the subject of railroad accidents has always had the greatest popular interest. That the facts are quite sufficient to warrant this interest may be seen from the following figures taken from the annual reports of the railroads of the country to the Commission for the year ending June 30, 1888. There were reported for that year deaths and injuries to persons as follows:

Passengers killed.....	315
Passengers injured.....	2,138
Employees killed.....	2,070
Employees injured.....	20,148
Other persons killed.....	2,897
Other persons injured.....	3,602
Total persons killed.....	5,282
Total persons injured.....	25,888

But the reports do not cover the total mileage of the country—only 92.792 per cent. of it. If the accident rate was the same on the roads not reporting, the total number killed was 5,693, and the total injured 27,898. These are the returns made by the railroad companies themselves, and they can not well be suspected of exaggeration. Neither is there, on the other hand, any reason to suppose that they are not, in most cases, complete and prepared with perfect good faith.

A thought strikingly suggested by these figures is that accidents to passengers take up an undue proportion of the public attention. Not only are casualties to employees several times more numerous, but they are concentrated upon a

comparatively small class, each individual of which undergoes considerable hazard. Some estimate of how great this hazard is in the case of one class of employees may be made from the records of the Brotherhood of Railroad Brakemen, an organization that has for one of its objects the insurance of its members against death or total disability. During the year 1888 the average membership of this brotherhood was 10,052.5. Insurance has been paid upon 114 deaths and 53 total disabilities, the result of injuries received from railroad cars during that year. In the same time there were only 31 deaths and 6 total disabilities from natural causes. These data are taken from the printed assessment notices of the order. Thus one in every 88 of the members of this organization is killed yearly, and one in 60 suffers either death or total disability. It appears also that a brakeman has only 31 chances in 145, or 1 in 4.7 of being allowed to die a natural death.

Exception may perhaps be taken to this conclusion, on the ground that brakemen are mostly young and vigorous men not likely to die from natural causes; but surely this view of the case is not more satisfactory than the other. No record is kept showing the number of lesser injuries received, but if the ratio of killed to wounded is taken as the same as that which, according to the figures quoted above, holds good in accidents to railroad employees over the country at large—namely, 1 to 9.73—the number of those receiving injuries serious enough to be reported to the Commission would be, exclusive of the killed, 1,109, or 1 in 9 of the members of the order. It would appear from this result that, besides running great danger of death, a brakeman will, on the average, be injured once for every nine years of service. It should be said that this brotherhood includes quite a number of conductors and others whose occupation is less dangerous than that of brakemen, so that the hazard to brakemen is presumably somewhat greater than here shown. It is probable that no occupation followed in this country by any large class surpasses in danger that of the railway brakemen.

It having been urged upon the Commission from several

quarters, but more particularly by the State railroad commissioners at the convention in March, that there was a necessity for some sort of national action in matters relating to safety on railroads, an investigation of the subject was begun in the spring of the present year. Although information has been obtained principally from miscellaneous sources, two circulars have been issued making inquiry concerning matters of special importance. The first, dated April 1, dealt especially with automatic freight-car couplers, and called not only for facts but for technical opinion. It was addressed to the heads of the car-building departments of all the leading roads. The second, issued May 17, concerned the general subject of Federal regulation of the mechanical features of railroad working, and was intended to call out from those best informed and most interested the fullest discussion of that subject and of the facts bearing upon it. It was addressed to all State railroad commissioners, to the grand masters of the chief organizations of railroad employees, and to a number of railroad experts and others who were known to have made special study of the matters in question. A number of the replies to this circular were prepared with much care and have great value, being in fact thoughtful discussions of the matters suggested by the circular, written from various points of view by men of ability and special knowledge. Both of these circulars, together with most of the matter elicited by them, will be found in Appendix 10.

The question of the prevention of loss of life and limb on railways has received study of late years from various quarters. It has been carefully investigated by the various State commissions, whose reports have served as a guide to legislatures, to public sentiment, and often to the railroads themselves. In no direction has inventive and executive mechanical genius been more active, or, on the whole, more successful. Some of the American inventors are not unworthy to be classed with Stephenson himself for what they have done to aid and perfect railway transportation. But perhaps the most important work of all, as far as mechanical appliances are concerned, has been done by the Master Car Builders' Association, an organization little known to the general

public, developed by the railway corporations themselves to meet certain requirements of modern railroading. This association meets annually, and, as regards one of its most important purposes, may be not inappropriately described as a federal assembly of car-shops, in which each railroad corporation has a voice, proportioned to the number of cars it owns, in determining upon those standards of uniform construction which extensive interchange of cars makes necessary. The conclusions of this body are recommendatory, and not binding upon its members, its careful methods of procedure likely to assure the best results, and the economies dependent upon uniform construction being relied upon to support its recommendations. Any improvement in safety appliances, then, which depends for its success upon uniform action by railroads all over the country, and the most important do so depend, must first secure the approval of the Master Car Builders' Association.

The importance of this association will further appear in the course of a brief sketch of some of the problems relating to public safety which apparently call for solution through national legislation.

AUTOMATIC FREIGHT-CAR COUPLERS.

The subject of automatic freight-car couplers deserves first mention because of the large number of lives lost and limbs maimed in coupling cars, because these accidents are not of a sort to attract the public attention they deserve, and because there seems to be a practicable remedy. No satisfactory statistics exist of the number killed and injured in this kind of accident. For the year ending June 30, 1888, 326 deaths and 6,827 injuries were reported to the Commission as due to this cause, but these numbers are somewhat less than the true ones, for the reason that part of the roads reporting keep no record which distinguishes coupling accidents from the total number. The danger of stepping in front of a moving car to guide a link into a pocket is sufficiently plain, and such a method of coupling has been considered for many years a reproach upon railroad construction. Nor is the danger of it the only objection to the link-

and-pin system. It is both expensive and mechanically defective. The pins, being loose and of some value, are constantly being lost and stolen. The coupling process is cumbersome and slow. If the cars coupled are not of the same height, one tends to hang, as it were, upon the other, often to the damage of both cars. The play or "loose slack" which each link permits causes every car to be started with a jerk, sometimes violent and injurious to both cars and freight.

It is a mistake, however, to imagine that these difficulties are easily remedied, or that there have been until very recently automatic devices against which serious or fatal objections could not be brought. Although some thousands of couplers have been patented, the difficulty has been not to choose among good ones, but to find any good one. Nor can any mechanic, however great his experience, judge by looking at a coupling device or by merely mechanical tests, what defects it may have. The conditions are so complex that only various and extended trial in actual service will determine the merits of a coupler, and many which gave the greatest promise have failed in such a trial. Nor is it possible, consistently with public safety or with railroad interest, to neglect the non-mechanical consideration, most difficult of all to satisfy, namely, that automatic couplers to be successful must be of a uniform type throughout the country. It is not at all necessary that they be of the same patent, but they must couple automatically with one another. That this uniformity is essential follows directly from the fact that freight trains are made up of a mixture of cars from many railroads, and that it is more dangerous to couple two automatic couplers of distinct types than to couple with the link and pin. In fact, it is the difficulty of obtaining this uniformity that now offers the most serious obstacle to the progress of automatic couplers, and supports the demand of railway employees for some authoritative action.

Although the deaths and mutilations occurring in coupling cars had been repeatedly discussed in the reports of State commissions, and railroads had been urged to move more vigorously towards adopting automatic couplers, the first

legislative action was taken by Connecticut in 1882. The statute provided that automatic couplers, approved by the railroad commission, must be placed on all new cars, under a penalty. A statute nearly identical in its provisions was enacted by Massachusetts in 1884. In that year, also, the legislature of New York passed a law that after July 1, 1886, no couplers other than automatic should be placed upon any new freight car to be built or purchased for use in the State. In 1885 a statute quite similar, naming the same date, July 1, 1886, was enacted in Michigan. Besides these of some years ago, we have quite recently a New York statute, approved June 16, 1889, which provides that after November 1, 1892, it shall be unlawful for railroads to run any of their own cars in that State unless equipped with automatic couplers.

It may be said of the earlier statutes that their greatest usefulness was probably in showing the railroad companies that public sentiment was earnest on the subject and required that something be accomplished. Uniformity was not furthered, since different commissions approved different couplers. The laws could not well be enforced upon roads only partly in the State. Many persons, including the present Connecticut commissioners, believe that the mixture of link couplings with a number of different automatic types tended to increase rather than diminish coupling accidents.

Attention, however, had been directed to the matter, and in 1884 it was the subject of earnest and thorough discussion by the Master Car Builders' Association, and definite progress was then made in the adoption of a resolution that "the vertical plane type of coupler was mechanically the best."

A "vertical plane" coupler, it may be explained, is one that permits an up and down sliding motion between the two parts, making it impossible for one car to hang or drag down upon another, as may happen with a link coupling. From this time the activity of the association, chiefly through its executive committee, was continuous and careful. A competitive test held by the committee in September, 1885, one of the conditions of which was that each coupler tested must be fitted as for actual service to at least two cars, resulted in

the selection of twelve couplers for further trial. The principal points determined by the test were facility of coupling and uncoupling under difficult conditions, as on sharp curves, and strength to resist concussion.

In 1886 and in the spring of 1887 tests of continuous brakes for freight trains were carried on at Burlington, Iowa, under the direction of a committee of the Master Car Builders' Association, and on a very large scale. These tests had incidentally a great influence on determining the value of different types of couplers, since it was shown in the course of the experiments that, contrary to the previous belief, the same engine could start as many cars provided with the "vertical plane" couplers, which are a kind of hooks fitting close together and permitting no play between the cars, except by compression of the draw-springs ("spring slack"), as it could of cars coupled with links, which have several inches play or "loose slack" between every two cars. It had before been urged, and generally believed, that the "loose slack," causing the cars to be started successively and permitting the engine to move several feet before starting all the cars, was a necessity in the handling of the heaviest trains.

The breaking down of this objection was, when added to other considerations, regarded by the committee as decisive; and at the Master Car Builders' convention in 1887 they submitted an elaborate report recommending one of the types of vertical plane hook couplers as the standard of the association. To determine what patent couplers came within the type it was suggested that an approved coupler be obtained from one of the manufacturers, and all others coupling with it in a satisfactory manner be regarded as belonging to the type. The next step was for the association to take a formal vote upon the standard thus recommended. Such votes are taken by letter ballot, a two-thirds majority being necessary to adoption. Each member representing a railroad is entitled to one vote and to an additional vote for each one thousand cars owned by the railroad. Upon a ballot of this sort the proposed coupler became a standard by a vote of 474 to 194. The precise form of the hook was left to a committee, and was published in April, 1888.

The standard of automatic freight-car couplers thus adopted by the Master Car Builders' Association is not strictly a single coupler, but a type or genus under which there may be an indefinite variety of patent couplers, differing materially in some respects, yet each capable of coupling automatically with every other. There are now perhaps a dozen patents under the type, and there will no doubt be more, so that it can not be said that its general acceptance would involve giving a monopoly to any patentee.

The activity of railroads in fitting their cars with these couplers has not, however, been satisfactory or as great as was generally expected. The natural way of introducing such an appliance is to have it placed upon all new cars and upon all old cars needing new draught rigging. A few roads only are doing this, though the Pennsylvania and other large systems are of the number. The first cost of the standard couplers is considerable—from \$20 to \$25 a car, as against \$10 to \$15 for the link-and-pin form—and is alone sufficient to deter many roads from adopting them. The movement for their introduction, too, is actively opposed by all interested in patent couplers which they would supersede. Some look upon the action of the association as premature and doubt its wisdom. Many are experimenting upon a small scale to determine which to choose of the patent couplers belonging to the type. The principal obstacle, however, is quite generally stated to be the need of uniform action. Automatic couplers serve no good purpose unless their use is so general that cars fitted with them come together in actual service, and are not lost among the multitude of cars fitted with link and pin. The automatic coupler is automatic only with another automatic coupler, and not with a link. When it meets the link a coupling must be made by hand, and is quite as dangerous, or more so, as that between two cars both rigged for the link and pin. At present only a very small fraction of the couplers in use are automatic. Obviously, then, there is a strong motive for each road to put off spending its money in making the change until assured of general co-operation.

The case may be summarized somewhat as follows: A few

large roads have actually adopted some form of the Master Car Builders' coupler, and are bringing it into use as fast as could reasonably be expected. Many others are experimenting with various forms. A few, principally in New England, are actively opposed to the standard. A very large number mildly favor it, but are waiting for general action. The smaller, poorer, and less progressive roads are generally indifferent to the whole question.

Meanwhile coupling accidents are as numerous and distressing as ever, and the question is raised whether the action of the Master Car Builders should not be seconded by national legislation. That it should is the view that seems to prevail among the employees whose lives are endangered, and is held by many others. It derives support from what appears to be the impossibility of securing the necessary uniformity in any other way. On the other hand, there are grave objections to such radical action. Those railroads who are moving slowly in the matter may urge with plausibility that the question is comparatively new and one of great importance, and that not only pecuniary interests but those of public safety also will be, in the end, best served if they act cautiously and only after sufficient experiment. The standard was not finally settled and drawings of it published until April of 1888, and some particulars, not, however, essential, were determined only in the present year. However unfortunate the present condition may be, it is not likely that any good will result from acting with undue haste. The requirements of a general law, which might be entirely reasonable for some roads, would work serious hardship to others, and probably result in forcing into use the cheapest and least desirable forms of the standard type.

Closely connected with the question of automatic couplers is that of a standard height above the rail for the coupling head or draw-bar, and standard proportions and position for the dead-blocks or buffers which take the shock of violent concussions. The danger of coupling by hand is greatly increased if the parts connected are not of the same height. A standard height was adopted by the Master Car Builders in 1872, and the fact that it is not closely maintained by car

builders shows the difficulty of securing uniformity even in a very simple matter. If the dead-blocks are not similarly placed on two colliding cars they fail in their office altogether, and if they are badly placed they imperil the brakeman. In this, as in other matters, uniformity is in itself a principal means of safety, since a man is much less likely to be injured when familiar with the apparatus he is dealing with than when it is strange to him.

CONTINUOUS BRAKES FOR FREIGHT TRAINS.

In this country the use of automatic air-brakes, continuous through the train and operated principally from the engine, is almost universal upon passenger cars. The control of freight trains in the same way, scarcely thought of ten years ago, has of late made considerable progress, and, questions of safety aside, is looked upon as promising one of the greatest advances in railroading that has ever been brought about. As a means of saving life it does not yield in importance to the use of automatic couplers. This saving is effected chiefly in three ways.

First: By diminishing the number of collisions and train accidents of all kinds. A freight train running at high speed can be stopped, if fully equipped with continuous brakes, in a distance less than its own length. If hand-brakes are relied upon it will usually run half a mile or more. It is thus, in the first case, subject to the immediate and efficient control of the engineer, who can stop it in a few seconds on the appearance of danger. Collisions are also frequently prevented by the automatic action of continuous brakes, which, in case a train parts by the failure of a coupling, immediately brings both sections to a stand. With hand-brakes, and especially on a steep grade, such accidents, which are quite common, often result in a collision between the parts of the broken train.

Second: The destructive effects of derailment are greatly decreased, since any displacement of cars sufficient to break the air-hose connecting two of them at once sets the brakes throughout the train and brings it to a stop, perhaps when as yet only a few cars have had time to leave the track.

Third: Continuous brakes do away for the most part with the necessity for traversing the tops of moving trains. Under the old system, which is still the general one, the men are out on the darkest nights and in the coldest weather, sometimes when the roofs are covered with ice, making their way from car to car, setting or loosing the brakes. The returns to the Commission do not show the number of men killed and injured in falling from cars, but an estimate may be made by taking that proportion of the totals which is usually found to be due to this cause. Such a process gives: Killed, 613; injured, 4,025.

Besides preventing and mitigating accidents, continuous brakes make it possible to run heavier trains, a greater number of them, and at a higher rate of speed than would otherwise be safe.

In their development they afford an interesting exemplification of the high degree of organization attained by the mechanical branch of the railroad interest and of the magnitude of the experiments it is in a position to undertake to determine the value of appliances. At the tests held in July, 1886, and May, 1887, near Burlington, Iowa, upon the Chicago, Burlington & Quincy road, and under the direction of the Master Car Builders' Association, each competing brake company was required to furnish a complete train of fifty cars with the appliances to be tested. The test upon each of the two occasions lasted three weeks; the trains were put through the most various and trying evolutions, every significant fact capable of measurement being recorded by carefully prepared apparatus. Since then long trains fitted out by brake manufacturers have on several occasions traversed the country merely for the purpose of testing and advertising some form of continuous brakes.

The outcome of these experiments and of the improvements resulting from them has been a high degree of efficiency.

The obstacles to the introduction of continuous brakes are much the same as those in the case of automatic couplers: first cost, about \$50 per car, and the need of simultaneous action by many railroads. The continuous brake apparatus

on any one car depends for its usefulness upon other cars being equipped in the same way. Any car not so equipped cuts off all behind it from communication with the air-pump on the engine, and without this communication the brakes are worthless. The apparatus begins to be effective only when a number of cars provided with it are brought together at the head of the train. Consequently the capital invested before the movement becomes somewhat general must in large part lie idle.

Wherever freight trains are run for long distances without being broken up upon roads which do not employ a large proportion of foreign cars, the conditions are favorable for continuous brakes. The greater part now in use are found west of the Missouri river. On the other hand, short lines doing most of their business in the cars of other roads can not well adopt them.

The subject of automatic couplers and continuous brakes for freight trains is of especial importance because the fact that these improvements are but slowly and cautiously introduced makes the principal ground for the feeling that the lives and limbs of railroad employees do not receive such consideration in the conduct of railroads as justice requires they should receive. There are forcible papers on this subject in the appendix.

It is, perhaps, to be assumed that expensive changes in equipment are and will be made by railroads only as they are expected to be profitable, and that life-saving is not always given sufficient weight. But it is by no means a fact that railroad officers as a class are indifferent to humane considerations, and much of this sort that is said is wholly unjust. Among them are not infrequently found men by whom the safety of their employees is held of the first importance and who are willing to make disinterested efforts to secure it. But such feeling is not, perhaps, most commonly found among those who have power to appropriate sums of money to carry out their wishes. With the higher officers and with the board of directors the safety of trainmen is likely to be a somewhat vague consideration, not forced upon the attention by personal observation, and not so distinctly

brought to their attention as are the facts pertaining to their pecuniary interest.

Nor should much weight be given to the statement sometimes made, that employees can not be protected; that they are usually themselves responsible for accidents, being reckless and unwilling to take the precautions that would save them. It need not be claimed for them that they are more cautious than other men, but only that their duties should, when possible, be made such that a reasonable degree of caution will protect them. It is not easy to see that a man whose foot catches in a frog while his attention is concentrated upon effecting a coupling, or who slips from a car on an icy night, is necessarily reckless. There is no reason for supposing that trainmen value their lives less than other people, or are less careful of them. A brakeman is as cautious as a general manager would be with the same duties, the same haste, exhaustion, and exposure. It is surprising that such arguments should have weight with any one.

HEATING OF PASSENGER CARS.

Early in the year 1887 the phrase "the deadly car stove" began to be familiar. Its deadly nature was not then a new discovery. Often before, as at Ashtabula, in December, 1876, it had added the horror of fire to the others which attend a railroad accident. But as yet no persistent public demand had been made for its abolition, possibly because the public had not realized that a substitute was practicable. But the winter of 1886-87 brought a series of accidents, which, being detailed in the press, made the public familiar with the picture of living men and women held beneath the timbers of a wrecked car and slowly burned. The Rio disaster on the St. Paul road, October 28, 1886, when seventeen persons were burned to death, was followed, January 4, 1887, by the burning of thirteen in a wreck at Republic, Ohio, and February 5, by the crushing and burning to death of thirty more at White River, Vermont. Lesser horrors of the same kind were not wanting. At that time systems of heating which do not require a fire in the cars were little in use except upon the

New York Elevated Railroad, where cars were heated by steam from the engine.

As soon, however, as the traveling public began to believe that stoves were dangerous and could be dispensed with, it became the aim of every enterprising road, solicitous for its popularity, to do away with them as fast as possible. Nor was the public in all cases content until its protests had taken an authoritative form. In Massachusetts, New York, and Michigan statutes were passed in 1887, the aim of which was to make the use of common stoves in passenger cars illegal after the winter of 1887-88. The result of this agitation was great activity on the part of railroads and inventors in originating and improving heating devices and in experimenting with them. Safety heaters, which, though requiring a fire in each car, were constructed with special reference to preventing its spread in case of wreck, were already in considerable use. These, however, though not forbidden by the statutes of Michigan and Massachusetts, were looked upon with some suspicion, and thought was for the most part directed to devising plans for heating cars by steam from the engine.

The problem whose solution was thus undertaken is a difficult and complex one, and is, after two winters' experience, though greatly advanced, still in an experimental stage. The legislators of 1887 overestimated in some cases what it was practicable for the railroads to do. The statute of New York required that after November 1, 1888, cars must not be heated by any form of stove or furnace kept in the car. In 1888, however, it was amended so as to give the railroad commissioners power to extend the time, in special cases, for a year longer. In Connecticut the commissioners, empowered by the legislature, issued in December, 1887, an order that all new passenger cars built or purchased for use in the State must be equipped for continuous heating. This order was generally disobeyed; and the Commission, after further investigation, condones, in its last report, this disobedience on the part of the roads, and intimates that it was justified by the unsatisfactory working of continuous-heating appliances.

A mere mention of some of the more obvious difficulties of continuous heating may serve to show that the problem is not an easy one. It has been claimed that in case of wreck the steam escaping from the broken pipe would scald to death imprisoned passengers. There is doubt if this danger be a serious one, but to diminish it steam is usually carried at low pressure. It is often necessary to heat cars which are not connected with an engine. This is the case with sleeping cars standing at stations, and may be the case with a train on the road and in the coldest weather, as when the track is blocked by snow and the engine is sent for help. A stove and fuel, as a provision against the latter emergency, should be carried in every car. The maintenance of a uniform temperature throughout long trains offers also considerable difficulties. Probably the most serious difficulty, however, concerns, just as in the case of automatic couplers and of continuous brakes, a question of uniformity. Through cars, especially sleepers, traverse several roads and can use no system of continuous heating which is not the same, in certain important respects, as that of each of the roads over which they pass. In these respects, where uniformity is important, there is at present the greatest diversity. There have been various attempts by those interested to bring about an agreement upon the form of steam hose coupling to be used between the cars, but so far without any promise of success.

There are now a dozen or more couplers upon the market and a committee of the Master Car Builders, appointed in 1888 to recommend one as a standard, found the difficulties so great that in their report this year they refused to do so. Some systems of heating use two pipes throughout the train, making a complete circuit from the engine to the rear car and back. Some have only one pipe. Some make the connections between cars below the platforms, some above, some at the roof of the car. It is plain that cars differently fitted in these respects can not be connected for continuous heating. Upon the whole it appears that the more progressive railroad managers have shown energy in this matter and a sincere purpose to extend the use of continuous heating as fast as

practicable. The present condition, however, is far from satisfactory, and towards the essential point of uniformity it is not apparent that any real progress has been made.

The problems of light and ventilation are naturally suggested by that of heating, but to cover, even in the most cursory manner, the whole subject of safety and comfort on railroads would be a tedious task and aside from the present purpose, which is to give such brief exposition of some of the more important matters as may help to show why Federal regulation has been thought desirable, and perhaps to suggest something of the difficulties it would have to meet.

Brief mention may here be made of the block system and of interlocking, to encourage wider use of which would undoubtedly be a part of the duty of any Federal agency taking cognizance of such matters. Under the block system the line of railroad is divided into sections a few miles long called block sections or blocks, so guarded by signals as to prevent two trains being in the same block at the same time. As soon as a train passes into a block at one end, the signals for the block are set at danger, and remain so until it passes out at the other end. Interlocking is a mechanical device by which the levers actuating a number of signals and switches are brought together and interlocked—that is, made interdependent in their movements, so that the fact that a switch is open will make it impossible for the signal which indicates that the track is all right to be displayed. A draw-bridge and a signal may be interlocked so that when the bridge is open the signal is necessarily at “danger,” and the signalman can not put it at “safety” even if he tries. Or a complicated system of switches and signals, such as is always necessary at freight or passenger stations where much traffic is handled, may be so controlled that it is mechanically impossible that they should occupy dangerous or inconsistent positions.

VIEWS OF STATE COMMISSIONS.

In view of the extensive interchange of cars, both freight and passenger, making it necessary that regulation in such matters as couplers, train-brakes, and heating appliances

should be general and uniform in order to be effective, it is not surprising to learn that State regulation has been found unsatisfactory. In its report for 1886 the New York railroad commission says:

To attain the main object of an automatic coupler—i.e., to save the lives and limbs of trainmen—it is most desirable that but one device should be in universal use. If there is diversity it will increase rather than diminish the present danger.

There appears to be but two ways for this to be brought about: one by the operation of the law of the “survival of the fittest,” the other by the creation by Congress of a commission to determine upon one coupler and compel its adoption by all companies engaged in interstate commerce.

The first method, it would seem, will be slow beyond all computation from present indications. There appears to be no good reason, however, why the second could not be done.

Under its power to “regulate commerce among the several States,” Congress has already prescribed rules for the inspection of hulls and boilers of steamships, for the examination of engineers as to their competency, for vessels being provided with boats, life-preservers, and for many similar things to insure the safety of travel by water.

It would seem that the same power could and should be exercised to insure safety in the operation of railroads.

In 1887 the Massachusetts commission says:

The tendency of opinion among railroad men is toward the selection of some vertical plane coupler. But it seems doubtful whether any one will be universally adopted, unless its use for interstate commerce shall be compelled by Congressional action. It would seem, however, that all compulsory State legislation, prescribing the use of any one coupler, must be unconstitutional and void so far as it relates to interstate commerce, for no State can direct the manner in which interstate commerce shall be conducted; and so much of our commerce is interstate that only an insignificant fraction will remain subject to the restrictions of local legislation in this respect. If this be so, it is probable that efforts will be made to provide mechanical safeguards to the great volume of traffic which is subject to interstate and international law.

In the report of the commissioners of New Hampshire for 1888, we read:

No commission whose authority is bounded by State lines can go fast or far in compelling the roads within its jurisdiction to adopt safety devices and appliances necessary for the protection of employees and passengers, such as steam heaters, electric lights, and automatic couplers.

Even if we assume that a State may delegate to a commission the power to prohibit upon its territory any but approved equipment upon cars used in interstate traffic, it is absolutely necessary that such equipment should be uniform upon all roads constituting a through line, and the obstacles in securing uniformity by the action of the several States through which such roads pass are apparent.

The regulation of these matters may properly be, and indeed must be, left to Congress or the Interstate Commission, which can prescribe rules applicable to the entire country, and make orders that can be enforced upon entire railway systems. With this in view the board has this year joined the commissions of other States in addressing to Congress a petition asking that the Interstate Commission be required to investigate the subject and propose some plan by which the desired results can be secured.

The same feeling was expressed in the resolution passed by the convention of railroad commissioners held at Washington in March of the present year:

Whereas, thousands of railroad employees every year are killed or injured in coupling or uncoupling freight cars used in interstate traffic, and in handling the brakes of such cars, and most of these accidents can be avoided by the use of uniform couplers and train-brakes; and

Whereas, the success and growth of the system of heating cars by steam from the locomotive or other single source largely depends on the adoption in interstate traffic of a uniform steam coupler; and

Whereas, these subjects are believed to be of pressing importance and within the proper scope of the powers of the Congress of the United States, while attempts on the part of the individual States to deal with them have resulted and must continue to result in conflicting regulations:

Resolved, That we do respectfully and earnestly urge the Interstate Commerce Commission to consider what can be done to prevent the loss of life and limb in coupling and uncoupling freight cars used in interstate commerce, and in handling the brakes of such cars; and in what way the growth of the system of heating passenger cars from the locomotive or other single source can be promoted, to the end that said Commission may make recommendations in the premises to the various railroads within its jurisdiction, and make such suggestions as to legislation on said subjects as may seem to it necessary and expedient.

PROBLEM OF FEDERAL REGULATION.

If it is assumed that the condition of things thus briefly outlined calls for some Federal action in the interest of safety, particularly of the safety of workmen in railroad employ, it remains to consider what that action should be.

Two distinct ways of proceeding are naturally suggested. Congress may, should it see fit, pass definite statutes requiring that certain appliances be brought into use upon all the railroads of the country within a certain time; or, having in view the difficulty and importance of the question, it may prefer to make some provision for its further investigation, trusting that the mere fact that such an investigation is in progress will not be without immediate results.

This Commission is not prepared to recommend a national law prescribing appliances. It does not assume to say that such legislation will never be advisable, but it is not prepared to say that it is advisable at present. The difficulties of formulating a law from which good results could be expected are certainly very great, if not insurmountable, and although pains have been taken to secure the views of all interested, no legislation of this sort has been suggested that seems plainly to be wise and safe. A statute requiring that all freight cars be fitted with automatic couplers by a certain date—a requirement against which it is probable that less could be urged than against any others suggested—has already been shown to be open to serious objections. It is impossible to say what the results of such a law would be, but there is no certainty that they would be good. If it did not bring about uniformity—and there is no assurance that it would—it would be most injurious to all interests involved, including those of public safety.

While it is no doubt highly desirable that results be reached as soon as possible, it is still more desirable that no mistakes be made. Nothing could be more unfortunate than a repetition, on an enormous scale, of the unsatisfactory results of State legislation. If the State statutes of a few years ago regarding couplers had been national statutes, it seems plain that the question would be in less hopeful condition than it is at present. The effect of that legislation was to hasten the adoption of a variety of automatic couplers, most of which must of course be set aside if uniformity is to be attained. In fact, the strongest opposition to the Master Car Builders' type of coupler—the one that, so far as can be seen, has most chance of uniform adoption—is found

in New England, where, as a result of State legislation, automatic couplers not of that type have secured a strong hold. A reasonable prudence and regard for the lessons of previous experience require that action involving the compulsory use of particular appliances should be undertaken only with the greatest caution and upon more thorough investigation than has as yet been practicable. It has been suggested that, for the present, at least, the interests of safety would be better served by providing for a board of specialists, so constituted as to command respect from both the railroads and the public, whose business it would be to make investigations and recommendations relating to railroad casualties. To determine in detail precisely how such a board or bureau should be organized, just how much it should be expected to accomplish, and what powers should be given it, is a matter of much delicacy, in the study of which careful attention should be given to bodies of a similar sort now in existence.

Although we have had in this country no national inspection of railways, we have had for nearly fifty years something closely analogous to it in the steamboat inspection service. And to find a nation which undertakes the inspection of railways with a view to the protection of human life, we need go no farther than England, a country where the relations between railways and the government are in many respects similar to what we have at home. Such inspection is also undertaken in the countries of the Continent of Europe, but as the conditions in those countries are much less like our own than those in England, their methods are not so instructive. These two examples of effort on the part of Government to increase the security of human life, the steamboat inspection service of the United States and the English system of railway inspection, may profitably be regarded as representative of two distinct principles, both of which may be usefully studied in dealing with the subject now under consideration. In the former we have an example of an inspecting agency which not only investigates safety appliances and makes recommendations and reports, but also has considerable powers of actual interference and control. In the English statute under which inspectors are appointed

it is expressly provided that "no person so appointed shall exercise any powers of interference in the affairs of any company." Both systems are successful, but it is clear that this success must be achieved in somewhat different manners. It is clear also that the inspecting agency which has the more power will require the more elaborate organization and incur the greater responsibilities. The system of steamboat inspection under our own laws is assumed to be familiar; a brief statement of the system of railway inspection in England is here given.

Although the English system of inspection of railways by officers acting under the direction of the Board of Trade dates back to 1840, the statute determining the powers and duties of the present inspectors was passed, like our Act to regulate steam-vessels, in 1871. That statute, after authorizing the appointment of inspectors, "provided that no person so appointed shall exercise any powers of interference in the affairs of any company," gives each inspector power to inspect any railway, and all its stations, works, buildings, rolling stock, etc.; to require the attendance before him of any person in the management or employ of a company; to require such person to answer his inquiries, and to enforce the production of any papers he considers important for his purpose. Provision is also made for a more formal investigation in very serious cases to be conducted by a court consisting of an inspector and persons designated by the Board of Trade to assist him. Such a court has no power beyond what is necessary for investigation. Its function ends when it submits a report of its findings to the Board of Trade.

Under this Act the Board of Trade appoints as inspectors three officers detailed from the Royal Engineers.

Their position is practically a permanent one, and they are, of course, men whose character and abilities command respect from all quarters. Whenever an accident occurs in the United Kingdom of which the Board of Trade desire to make investigation (there need not necessarily have been any loss of life) one of these officers is selected to make it. He proceeds to the scene of the accident, conducts his investigation, and makes his report. As soon as this is printed a

copy is sent to the management of the company on whose line the accident occurred. A blue book containing these special reports, together with complete accident statistics, is published quarterly. The number of reports for each quarter, of course, varies greatly, but the average is about twenty-five. They enter into minute detail, and yet are clear and vigorous. A short account of the accident and the damage done in it comes first; then follows a careful description of the surroundings; then the evidence in a concise form; and finally the concluding portion, in which the accident is discussed, responsibility fixed, and recommendations made.

The only power in the nature of actual interference which inspecting officers exercise is in the case of a new line. Such a line can not be opened till the Board of Trade gives its sanction, and the inspecting officers can and do require that everything that they think necessary for safety be provided before they recommend that this sanction be given. But when sanction is once given, the Board has no further power. After the line is open the company may even remove works which it has erected to obtain the Board's sanction; and there is no remedy.

Besides the quarterly publication of returns of accidents already mentioned, two other documents, relating to safety appliances, are regularly issued by the Board of Trade. One is issued half-yearly, and relates to continuous brakes on passenger trains. It is made up chiefly of returns which the companies are by act of Parliament required to make, showing in the most complete manner the number and proportion of passenger cars fitted with continuous brakes, the kind of brakes used, every case of failure of continuous brakes to act, giving cause of failure in detail, and in general the progress in the use of continuous brakes from year to year. The second document is published yearly, and contains similar returns relative to the interlocking of switch and signal levers and the block system. The purpose of these publications seems to be to assure complete publicity, to keep the people and the railroads themselves alive to what the latter are or are not doing, and at the same time to furnish data from which the efficiency of various appliances

may be studied. In addition to these regular publications the Board from time to time issues circulars pertaining to matters in which especial pressure seems to be necessary.

Although the success of this unpretentious system of regulation has been very decided, there has frequently, at times when accidents appeared especially numerous, been considerable agitation to have the supervisory authority of the Board of Trade extended. After investigation, however, the proposition to give the Board powers of direct control has invariably been rejected, and none have opposed it more strongly than the Board itself and its inspecting officers. During the past thirty years the prevention of accidents has several times been the subject of parliamentary inquiries, the most thorough of which was made by a royal commission appointed in 1874. Their report, presented three years later, is accompanied by a quarto volume of evidence, containing 1,150 pages. Regarding an extension of the powers of the Board of Trade, they speak as follows:

Large as are the powers now possessed by the Board of Trade and the railway commission, in respect of railways, they are so adjusted and so limited as to leave with the companies the undivided responsibility of working their lines. The first and most important question, therefore, which we have had to consider, as affecting the entire character of our report, is whether our investigation leads us to advise a departure from this policy which has heretofore characterized railway legislation.

With this point in view we have given a wide scope to our inquiry. We have not only examined the responsible officers of the Board of Trade and of railway companies, but we have also received the statements of railway servants of every grade. We have, moreover, personally inspected railway premises and works in various places throughout the kingdom, and investigated on our own behalf certain typical cases of railway accidents. And in conducting these inquiries we have given the fullest consideration to the system of railway management, especially with respect to the condition and dangers of railway servants. But upon full consideration we are not prepared to recommend any legislation authorizing such an interference with railways as would impair in any way the responsibility of the companies for injury or loss of life caused by accident on their lines. To impose on any public department the duty, and to intrust it with the necessary powers to exercise a general control over the practical administration of railways would not, in our opinion, be either prudent or desirable. A government authority placed in such a position would be exposed to the danger either of appearing indirectly

to guaranty works, appliances, and arrangements which might practically prove faulty or insufficient, or else of interfering with railway management to an extent which would soon alienate from it public sympathy and confidence, and thus destroy its moral influence, and with it its capacity for usefulness.

Even the powers now expressed by the Board of Trade in respect of new lines of railway are not wholly free from these objections. Here, however, the practical evils are so slight and the benefits are so considerable and definite, that we think the only question is, whether these powers might not be still further increased. But, once a railway is opened, the State now holds the company responsible to maintain it and work the traffic in a manner compatible with the public safety. The Government inspecting officers have powers of inspection, and their reports are exceedingly valuable; but to go further and clothe a government department with unlimited powers to interfere in the interests of public safety with the detailed working of traffic upon railways must necessarily create a concurrent responsibility, and in whatever measure this responsibility be cast upon a government board, the responsibility now resting upon railway companies will be diminished.

This reasoning seems to be amply supported by the evidence, and, together with the other objections noticed in considering the Steamboat Inspection Service, is believed to be conclusive against the institution of an administrative agency with power to enforce upon railroads the use of particular appliances.

In the consideration of the general subject of railroad inspection and supervision it should not be overlooked that there are in many of the States, if not all, statutory provisions of more or less vigor for the inspection of railroads in the respective States by State officials. The reports of some of the State railroad commissions show that their inspection of the railroad as a structure is very thorough. Some of the reports are also very full and complete as to accidents, showing their cause, nature, and extent, and in establishing the individual responsibility therefor when negligence or want of care was the cause. Twenty-six States have already provided for State commissions, with powers and duties varying somewhat in degree but of the same general character. The tendency is in the direction of increased power and duties in these boards. Judging from their rapid growth in the past, both in numbers and scope, probably every State will

soon have a commission upon which will be imposed, among other things, the duty of thorough annual inspection of the roads in each State, respectively, and of investigation of all matters pertaining to accidents and injuries in railroad operations. The necessity for Federal inspection and regulation will exist, as already shown, more especially where uniformity is required in safety appliances in the train equipment.

With these general statements the whole subject is submitted to the wisdom of Congress. It will be perfectly obvious, on what is stated, that if any system of Federal inspection or supervision in respect to railroad appliances is provided for, it must be impossible for the members of this Commission in person to perform the duties of such inspection and supervision.

INSURANCE FUNDS AND THE RELATIONS OF CORPORATIONS AND THEIR EMPLOYEES.

Though questions relating to the well-being of men in railroad employ and of their families are not by the Act to regulate commerce expressly referred to this Commission, they are not so far foreign to it as to preclude their receiving some attention at our hands. Indeed, the prosperity of railway corporations and the safety and usefulness of the service performed by them is largely connected with the condition of their employees, and it is therefore not only natural that public interest in such condition should be largely enlisted on humanitarian grounds, but that also it should receive the attention of public authorities because of its being a matter of general concern. The number of these employees is very large. Their work is of peculiar importance to the public, and is performed under circumstances of great responsibility and danger. All these circumstances not only give them special claims upon public consideration, but enlist the public attention because of the large interests that all classes of the community have in the safe and judicious performance of their duties, which must always depend in some degree upon their ability to make proper provision for themselves and their families.

A comprehensive view of the relations which exist between

them and the corporations by which they are employed is therefore, no less interesting than important; and it seems desirable to the Commission that facts should be gathered showing not only what provisions were made in the nature of insurance for the persons and families of employees by organization among themselves, but also to what extent their employers have made provisions for funds to accomplish a like purpose. For this purpose circulars were addressed to the heads of the most important orders now in existence composed of railroad employees, and also to officials of eighty-five of the leading railway companies. The result of the information gathered by these circulars will appear in an appendix to this report.

The main points upon which information was sought from the organizations of employees were: Whether the order or organization provided any sort of insurance or benefit fund for the relief of the families of members in the event of injury, sickness, or death of the member; whether any rules of apprenticeship prevailed before admission to the organization; whether grades of service among engineers and conductors were recognized, either by the organization or by their employers, and if so, what were the conditions of such grades, and whether promotions among shopmen were made from the men so employed or from outsiders.

The principal questions asked of railroad managers were substantially the following: Whether an insurance or guaranty fund was provided for employees in case of their disability by accident or illness, or to relieve their families in either event, or in case of death. If so, all facts relating to the mode of accumulating such fund, its maintenance, disbursement and conditions, were called for; also, whether eating or lodging-houses have been provided for trainmen when from home, or reading-rooms or other resorts; whether the company addressed had an established system of technical training for its men; whether a regular plan of promotion existed as an inducement to the employees to attain a high degree of efficiency; and whether special rules were promulgated to make sure of obtaining competent locomotive engineers and other trainmen.

An exhaustive analysis of the replies sent to the circular will not be attempted here, but an examination of them will prove interesting and profitable.

On the part of the labor organizations it is made to appear that there has been a very general adoption of something in the nature of a mutual insurance system on the assessment plan, whereby, in case of injury or disability from sickness the beneficiary draws a stated weekly allowance, or, if death ensues, his family is made sure of a sum that will at least suffice to remove immediate want. There is every evidence that this insurance feature has the hearty support of the several brotherhoods or orders, and is greatly to the advantage of the members. The only questions made related to the methods to be employed and the persons to whom control should be given. Funds devoted to this purpose seem, so far as may be judged from the reports, to have been well managed, and the success that is claimed to have attended all efforts in this direction may be expected to continue with the spread of the system. An expression adverse to the relief associations organized by certain of the railroads is set forth by the grand secretary and treasurer of the Brotherhood of Railroad Brakemen, whose reasons will be found given in detail in the appendix.

In the matter of rules governing apprenticeships no fixed system seems to prevail, nor any desire to interfere with company regulation.

As to promotions, the prevailing sentiment favors making length of service the determining factor where other things are equal, and the bringing of men from the outside to fill positions is spoken of as a cause of dissatisfaction in one of the brotherhoods. Those who speak for the principal orders are unanimous in expressing their belief in the good results attending such associations, not only to those who are thus banded together, but to the employing companies. It is insisted that a more trustworthy and efficient class of men is secured thereby. One of the organizations, in particular, makes sobriety a condition of membership, and deviation therefrom a cause for expulsion. Harmonious relations

between employers and employees are noticed in several communications.

The inquiries addressed to the railroad companies are quite fully answered, and embody much valuable information. All to whom the circular was addressed have responded fully, and of the eighty-five answering, twelve appear to have instituted insurance funds in the interests of their men; five others have hospital funds; five have benefit associations, supported wholly by employees; one contributes annually \$500 for a like purpose, and one contemplates starting an insurance department at an early day. Fifty per cent. of the lines heard from furnish eating or lodging-houses to their employees needing them. Twenty of them provide technical education to a greater or less extent, but in all cases where no regular technical training is supplied as such training the apprenticeship system prevails, or men are selected who have proved their competency by actual service. It is plain from the responses obtained from both classes that, with the growth of closer relations between employees and the corporations, not only are the interests of both greatly promoted, but the public is assured of better and more efficient transportation service.

RAILROADS IN FOREIGN COUNTRIES.

In January, 1888, the Commission addressed a communication to the Secretary of State, expressing the desire that the Commission should be furnished with copies of such publications relating to railroads and internal commerce as are issued by foreign governments, and requesting his assistance in procuring the same. In compliance therewith the State Department transmitted to the Commission documents pertaining to railroads in China, Japan, Persia, Norway and Sweden, Netherlands, Dutch Colonial Possessions, Russia, Island of Trinidad, Uruguay and Paraguay, Argentine Republic, Chili, and Mexico. Extracts from some of these documents and abstracts of others are attached hereto (Appendix 12.) The Commission is in possession of much information from other sources in respect of railroads in

other foreign countries, which need not, however, be given at this time.

HOW THE ACT HAS BEEN ADMINISTERED.

The general course pursued by the Commission in the practical administration of the provisions of the statute, and the scope of its authority, are proper subjects of public interest.

The paramount aim of the Commission has been the object for which the statute was enacted—namely, to bring the transportation business of the country under the control of its provisions. Undoubtedly the first duty of an administrative officer is to give effect to the law under which he acts. Much depends, however, on the manner in which this is done, and misdirected energy may render a law nugatory. A fanatical or sensational course rarely leads to good results, but, on the contrary, usually provokes antagonisms, and often tends to defiance of the law itself.

When a law relates to great business interests intended to be governed by its provisions throughout the whole extent of a vast country, with many diverse characteristics, great care is required to so administer the law that it shall be respected and obeyed. In a matter of such magnitude and importance as the transportation business of this country many other things are required besides prosecutions for violations. Careful interpretations of the provisions of the law, correct knowledge of the subjects to which it applies, and of any distinctions in conditions that may modify its application, are necessary, in order that it may be intelligently applied. A reasonable time was also required to enable business interests generally to become familiarized with the changed methods under the law, and for carriers to adjust their classifications and schedules and their modes of business to the new requirements.

It was deemed a matter of primary importance to bring the interests affected into harmonious relations to the law, and to understand that, while it revolutionizes certain methods, it is something more than a merely punitive statute, defining crimes and providing for their punishment, and that its ultimate purpose is the general good of the country, not

less of the carriers themselves than of the public. This may involve what is sometimes called an educational process, but when many courses of long standing are to be unlearned, as well as right courses to be learned, it is an important process in dealing with intelligent men, not essentially bad, nor engaged in criminal pursuits, but whose faults were, in many respects, wrong methods in the conduct of a legitimate business, in which they had too often been taught that success might be regarded as justifying the methods employed. A standard of right and wrong as well as of legal duty was to be set up, and conformity to this standard induced, if possible, by the conviction that their true interests would be better promoted. The numerous complaints from parties interested, calling for investigation and decision, and the opportunities they afforded for explaining the principles of the law and pointing out the rules to be observed, it was thought would for a time largely aid in producing this conviction, and perhaps suffice in the form of prosecutions. It was not doubted that, if the carriers of the country, managed in great part by well-informed and able men could become convinced that compliance with the law would result in better relations between themselves and between carriers as a class and the public, and that their interests would be subserved in consequence, only exceptional instances would remain to be dealt with by punitive methods.

Much attention, therefore, has been given to this aspect of administration, and the Commission believes that, upon the whole, good results have followed, and that the body of the carriers of the country are in accord with its efforts in this direction and desirous in general to co-operate in the enforcement of the law.

In consideration of the motives that usually influence human conduct in great business affairs in which the whole country is concerned, it was believed that at the outset at least, and until leading principles were fairly settled, it would be more profitable for the Commission for the most part to lay down rules of conduct for the present and future, and by frequent conference and intercourse with managers to have these rules observed, than to devote its time mainly to insti-

tuting and conducting penal and criminal prosecutions. There is, also in the public mind, a sense of incongruity between the prosecuting function, involving as it does detective methods and an attitude of hostility, and the judicial function, rightly expected to require impartial and just investigation and decision of controverted questions of law and fact. It is a fundamental principle, and generally provided for by statutes, that every man shall have a fair trial before a tribunal free from any possible bias that might arise from relationship, interest in the result, or partisan connection as attorney or counsel, or who may become a prosecutor in the transaction.

It is not intended to be implied that official prosecutions should not be instituted directly by the Commission. The enforcement of the law by the methods provided for in the Act is part, and a material part, of its duty, and prosecutions constitute one of those methods. It is only meant that prosecutions in the courts, inaugurated and carried on by the Commission, would necessarily have superseded other duties that were more useful and apparently more important. The preparation and conduct of prosecutions, if made the main duty, would inevitably occupy nearly the whole time of the Commission, and leave little opportunity for other matters. Such prosecutions must take place in the United States courts. They are not cognizable before the Commission. The jurisdiction of the Commission does not cover suits for penalties or criminal indictments. The theory of the Act is similar to that upon which several State commissions have been created, that the Commission shall investigate and report its conclusions of fact and law, and in certain instances award reparation for damages, but that its determinations are only enforceable in the courts, for which purpose its conclusions of fact are *prima facie* evidence.

The publicity that ensues from the exposure of practices or acts that are wrong, or in contravention of the statute, brings the force of public opinion to bear upon them, an element of great importance in the administration of all laws, and the conclusions, or even suggestions, of the Commission are almost invariably acquiesced in by the carriers.

Any person is at liberty to prosecute in the courts for penalties or crimes under the Act, or for infractions of its provisions; and any party to a proceeding before the Commission may resort to the courts to have its conclusions or awards enforced in a summary way. One serious difficulty, however, that exists in penal and criminal prosecutions, is in procuring testimony to show violations of the statute. The more public violations, such as failures to file and publish tariff schedules, or greater charges for shorter than for longer distances when not claimed to be justified under the law, are of rare occurrence, and no one is a party to them except the carrier; but violations of a more private character, such as rebates or discriminations in rates for freight or passengers, or underbilling or false billing of traffic, can not exist without complicity between the shippers and the carriers. These are never open or public, but secret. The interest of both parties to the transaction requires concealment, as well to escape the penalties of the law as for other reasons. Proof of such cases is obviously difficult to obtain. Instances occur in which the inference is strong that some feature of the law has been violated or evaded, but inferences, to warrant convictions, must be drawn from facts and circumstances proved, and when both parties to such transactions are interested in keeping them secret, or liable to similar punishment, the necessary evidence of the facts tending to show culpability of a carrier or some officer or agent, is not easily procured. And the settled principle of our jurisprudence that protects a man from giving compulsory evidence criminating himself, is a shield under which offences may frequently hide.

The provision in the Act that the claim that testimony may tend to criminate the witness shall not excuse him from testifying, but that his evidence shall not be used against him on the trial of any criminal proceeding, does not entirely meet this difficulty.

These observations indicate, in a general way, the considerations that for a time have governed the action of the Commission. The time has come, however, when more aggressive steps can properly be taken. No excuse can longer be made

that the law is not understood, or that sufficient time has not elapsed to give the carriers opportunity to conform their methods to its requirements.

AMENDMENTS TO THE ACT.

The twenty-first section of the statute requires the Commission to report to Congress such recommendations as to additional legislation relating to the regulation of commerce as it may deem necessary. Pursuant to this requirement the Commission reports that, in the practical administration of the law, it has become convinced that certain additional legislation, some in the form of amendments to existing sections, and others in the form of additional sections, is important and necessary.

These may be briefly summarized as follows:

(1) An amendment to the first section, correcting some ambiguities of language and making more definite and certain the transportation, both interstate and international, intended to be subject to the provisions of the Act.

(2) An amendment to the third section relating to the routing and the interchanges of traffic between carriers, so as to better provide for through traffic at through rates over connecting lines. This amendment was recommended in the report for the year 1888, and is now repeated.

(3) An amendment to the twelfth section, relating to the attendance of witnesses and to the taking of testimony by deposition. Objection has been made that the attendance of witnesses can not be required outside of the judicial district in which they reside. The Commission believes the objection is not well founded, and that the law could not be effectually administered under such a rule. As the fact that the objection has been made indicates that obstructions and delays may occur, it is better that the language of the Act¹ should be open to no misconception.

Depositions are authorized by law to be taken for use in the Federal courts, but there is now no provision for taking testimony by deposition to be used before the Commission, and it can only be done by the consent of parties. This

practice has been followed in many instances, but it is obvious that it ought not to be merely voluntary. As the taking of testimony in that manner is a great convenience and lessens expense as well as facilitates business, it should manifestly be authorized.

(4) An amendment to the twenty-second section, providing that the provisions of the Act shall not prevent the free carriage of persons injured in railroad accidents and the physicians and nurses for attendance upon and care of persons so injured, nor prevent the transportation free or at reduced rates of the actual resident members of the families of employees of railroad companies.

Some other matters deemed necessary to be provided for by additional legislation would perhaps be more appropriate for new or supplemental sections to the act than as amendments to existing sections. These are :

First: The prohibition of the payment of commissions by one railroad company to ticket agents of another railroad company for passenger transportation, and the like prohibition of commissions for soliciting or procuring traffic to outside organizations or persons.

Second: The abolition of ticket brokerage by requiring, as elsewhere suggested in this report, that every person who sells passenger tickets shall be duly authorized by the company for which he sells, and exhibit his authority, and that the company shall be responsible for his acts. If deemed practicable, the price at which the ticket may be sold might also be required to be stamped upon the ticket. And further, requiring companies that sell excursion tickets to redeem unused coupons.

Third: The regulation of the payment of car mileage for the use of cars of private companies or individuals.

Fourth: An extension of the law to make it apply to common carriers by water.

Other subjects upon which legislation may be deemed expedient are discussed in this report without recommendation, and submitted to the consideration of Congress.

Documents published in the appendix, but not heretofore mentioned as a part thereof, are the amended Act to regulate

commerce and the amended rules of practice adopted by the Commission. (Appendix 13 and 14.)

All of which is respectfully submitted.

THOMAS M. COOLEY,
WILLIAM R. MORRISON,
AUGUSTUS SCHOONMAKER,
WALTER L. BRAGG,
WHEELOCK G. VEAZEY,
Interstate Commerce Commissioners.

HERVEY BATES AND H. BATES, JR., v. THE PENNSYLVANIA RAILROAD COMPANY AND THE PENNSYLVANIA COMPANY.

Complaint filed August 29, 1889. Answers filed September 12 and 13, 1889. Heard at Indianapolis September 17, 1889. Leave to appear and be heard granted to the Baltimore & Ohio Railroad Co., October 31, 1889. Brief on behalf of Baltimore & Ohio Co. filed November 22, 1889. Decided February 7, 1890.

The defense of water competition from Chicago and the lake shipping points to seaboard points east, as a justification for an otherwise unjustifiable discrimination in rate between corn and its direct products from Indianapolis to said seaboard points was held to be untenable, owing to the situation of Indianapolis as to the lakes and to the location of the territory where the corn was mainly raised that was marketed at Indianapolis, and to the other facts established in this case.

Where an existing classification and rate are not shown to operate injuriously to the carriers from a given point or to give undue advantage to shippers, a change is not justifiable that materially injures an important industry and a class of shippers at that point who have there built up the industry in reliance upon a continuation of the previous classification and rate first established and long maintained by the carriers themselves, without complaint from any quarter. Such change in classification and rate would subject the persons engaged in the industry and the locality and the particular traffic to unreasonable disadvantage within the prohibition of section three of the Act to regulate commerce.

A discrimination between the rate on corn and its direct products from a given locality resulting from a reduction of the rate on corn below the rate on its direct products, which subjected persons in that locality engaged in the business of manufacturing corn into its direct products and of selling the same to unreasonable prejudice or disadvantage, and was without necessity or advantage to the carrier, or any reason founded on the character or condition of the traffic. *Held*, to be in violation of section three of the Act to regulate commerce, notwithstanding the new rate on corn was open to all persons equally and with equal service.

When carriers other than the respondents of record are committing the same violations of the Act to regulate commerce as the respondents, an order may issue against the respondents and the cause be held for the purpose of bringing such other carriers into it to be proceeded against unless they comply with the order.

W. A. Ketchum, for complainants.

J. T. Brooks, for defendants.

John K. Chren and *Hugh L. Bond Jr.*, for Baltimore & Ohio R. R. Co.

VEAZEY, Commissioner:

The complaint in this case charged that Hervey Bates and H. Bates, jr., are engaged in the business of milling at Indianapolis, Indiana, operating and carrying on the mills known as The Indianapolis Hominy Mills; that the defendants are common carriers by railroad between Indianapolis, in the State of Indiana, and New York, in the State of New York, and subject to the Act to regulate commerce; that by the terms of their freight tariff in force they persist in a serious and ruinous discrimination against the business of the complainants, and to the corresponding advantage and profit of certain and all millers making the same or similar goods at or near the seaboard, or in the various cities at or near the eastern termini of said railroads; in that they charge and collect as freight charges on corn transported from said city of Indianapolis to said city of New York, at the rate of eighteen and one-half cents per hundred pounds weight; while contemporaneously and under similar conditions charging and collecting as freight charges on ground corn, cracked corn and corn meal, grits and hominy, and the refuse from the manufacture of said products called feed - - at the rate of twenty-three cents per hundred pounds weight, thereby giving a direct and immediate advantage to millers at or near the eastern termini of said defendants' railroads of four and one-half cents per hundred pounds, and placing upon the complainants a disadvantage and consequent loss exactly corresponding to the gain of these eastern competitors; that the goods manufactured by the Indianapolis Hominy Mills are largely and mostly sold in New York and other eastern

cities, and that the business of complainants has grown to its present large proportions nurtured through many years by a freight tariff from Indianapolis to the seaboard always equal to and no more than the tariff on the whole grain, and that it is but recently that mills making the same or similar goods have been established in the eastern part of the country; that such discrimination is ruinous in the extreme is shown by the fact that two and eight-tenths cents per bushel on the price of corn (5c. per cwt.) is sufficient to absorb the profits of any western mill for the past three years some three or more times.

Each defendant answered separately but in substance the same, denying all averments of violations of the Interstate Commerce Law by discriminations as alleged in the complaint, but admitting that the rates charged for raw corn and its products were as alleged therein, and averring that the rate of twenty-three cents for transportation of corn products is just and reasonable, and the rate of eighteen and one-half cents per hundred pounds for transportation of raw corn is not as much as it should be, but denying that the difference in rates for the transportation of corn and corn products is an unlawful discrimination against complainants.

The defendants respectively averred that the rate of eighteen and one-half cents per hundred on corn is forced upon them and other railway lines of transportation between Indianapolis and New York city and other eastern cities by northern lines of transportation which are made up wholly of lake and canal or partly lake and canal and partly rail routes; that the price charged by these northern water routes for the transportation of corn to New York city and other eastern cities is much less than eighteen and one-half cents per hundred, and unless defendants and other rail routes extending from Indianapolis eastward should reduce their rates for transportation of corn to eighteen and one-half cents per hundred, no corn would be offered to defendants for transportation eastward. Defendants further say that the rail routes extending from Indianapolis eastward transport only about six hundred thousand bushels of corn per year, while the northern water routes above mentioned transport annu-

ally about fifteen million bushels, and the defendants aver that whatever disadvantage complainants incur in consequence of difference between rates charged on corn and corn products arises from the fact that the northern water routes transport corn eastward in such large quantities and at such low rates in comparison with what the defendant companies do, and from the further fact that it is impossible for the complainants doing business at Indianapolis to be on an equality with competitors in business who are so situated as to have the advantage of water routes of transportation.

It is found from the evidence that in the railroad official classification of corn and its direct or immediate products, such as ground corn, cracked corn, corn meal, grits, hominy and feed, they have all for twenty years, more or less, been in the sixth class, and were so classified by the defendant companies and other railroad companies constituting the railroad routes between Indianapolis and eastern seaboard points; that this classification continued until July, 1889, and that until the last-named date there has been no discrimination in rate between raw corn and its immediate products; that on the said 1st of July the rate on raw corn as well as its direct products was and had been previously thereto twenty-five cents per hundred pounds by rail from Chicago to New York and other eastern seaboard points, and that on that basis the charge was and had been twenty-three cents from Indianapolis to New York, as the fair proportion of the rate from Chicago to New York on account of the less distance from Indianapolis; that about the 10th of July a reduced rate was put into effect to the seaboard on corn. This reduced rate was first made by the Baltimore & Ohio Railroad Company and was soon followed by the defendants and other companies. This resulted in negotiations between railroad companies and an agreement was finally effected to make the rate on corn products between Chicago and eastern seaboard points twenty-five cents per hundred pounds and the rate on raw corn twenty cents, and the rate from Indianapolis to the same points was fixed at eighteen and one-half cents on corn and twenty-three cents on its products, this being a fair proportion of the last-named Chicago rates.

It is further found that twenty-three cents per hundred pounds is not an unreasonable charge for the transportation of corn products from Indianapolis to the seaboard, and that the rate of eighteen and one-half cents per hundred pounds on corn produced but little profit under favorable circumstances, and sometimes none to the carrier, but that the railroad would rather carry it at that rate than not to transport it. The evidence tended to show, and there was no evidence to the contrary, that no reason founded on cost of service existed for difference in rates between corn and corn products, and it is found upon the showing in this case that the defendant companies could afford to carry the direct corn products at the same rate that they could afford to transport the raw corn.

It is further found that the rate for the transportation of corn from Chicago to New York by water, through lake and canal, is and has always been a varying rate, depending upon supply and demand of traffic and vessels for the service, but always as low as twenty cents per hundred pounds, and generally lower. It was clearly established that the proportion of corn carried east from Chicago by water, as compared with that which is transported by rail is very much larger. The corn raised easterly of the line of the Chicago & Eastern Illinois railroad does not to any great extent go to Chicago in its transportation to eastern markets, but is carried east by the railroad lines.

The corn raised west of the said described line does, as a rule, find its way to market through Chicago. This was the condition before the said reduction in rates last July, and there has been no apparent change since. That is, the same proportion went by Chicago prior to July that has gone since the reduction in the rate on corn was made by taking the corn out of the classification and making a commodity tariff.

One of the complainants testified that this change in the classification of corn and the consequent change in the rate thereon affected their business injuriously and it is found that their milling business has suffered materially since that change. One of the complainants testified, and it is so

found, that they have been obliged to pay more for corn since said change than they had to pay before. The complainants have been engaged in the milling business in Indianapolis as alleged in their complaint for the last five years, and marketed the product of their mills largely at seaboard points in the east. There are many similar mills at different places in the east, some constructed more or less recently and others which have been in operation for a great many years. The market for their product and also for that of complainants' mills was mainly in the east.

It having appeared on the trial that the Baltimore & Ohio Railroad Company might be directly or indirectly interested in the determination of the cause, an order was made that said company be notified of the pendency of the same and be given an opportunity to be heard therein and to signify its purpose in that behalf. In reply thereto said company signified its desire to be heard and submit an argument, whereupon an order to that effect was issued, and said company appeared and submitted a printed brief.

Other facts will be alluded to.

Counsel for complainants insisted in argument that the evidence had well established the facts averred in the petition, and denied that it was water competition that forced the alleged discrimination. Therefore they asked, not to have the old rates on corn restored, or the rate on corn products reduced to the rates on corn, but to have the discrimination undone and a classification re-established that would include as formerly both corn and the direct products of corn in the same class.

The counsel for the respondent companies first protested against a decision regulating only their respective rates on corn and corn products, but leaving their six competitors between Indianapolis and the seaboard free to continue the present classification and rate.

They made the further point in argument as in their respective answers: First, that it was necessary to reduce the rate on raw corn from twenty-three cents per hundred pounds to eighteen and one-half cents from Indianapolis to New York

by reason of the water competition by lake and canal from Chicago and other lake points in order to get the traffic; that in short, the reduction was forced by water competition. We take up this point before referring to other matters of defense.

Indianapolis is situated at distances from different lake shipping points of from 154 to 327 miles. The shortest rail route to Chicago is 183 miles, and to Toledo 213 miles. Its situation is to the south of these and the other lake shipping points. The amount of corn going east from or through Indianapolis is comparatively small. Whatever traffic of this kind there was, came from the territory mainly east of the line of the Chicago & Eastern Illinois railroad, and as to such corn the testimony was undisputed that the Chicago lake routes do not interfere very largely with the traffic coming by rail east of that line. We think it a fair deduction from the evidence that the corn reached by the Indianapolis millers or that found a market at or through that city was not produced in a section where it naturally or advantageously, to much extent, became the subject of water transportation east. Undoubtedly the cheap water transportation from actual lake points east, although so distant from Indianapolis and the region where the corn was mainly raised that had before the reduction found a market at Indianapolis, would naturally influence to some extent railroad companies in making rates east from said city. It would perhaps be difficult to locate a railroad of any considerable length and having a large traffic anywhere in our country outside of all influence of water competition in respect of rates for transportation, at some points along its line. But we are fully satisfied that in view of the distance of Indianapolis from water transportation and of its location as a market for corn brought there for manufacture into its direct products or for sale to the eastern trade, the northern water routes to eastern points were not so potent as to necessitate a reduction of the rate to the point reached in this case in order to enable the railroads running east from Indianapolis to retain their usual corn traffic from that point.

It is quite apparent from intimations of some witnesses in

the cause, and from statements in the brief of the Baltimore & Ohio Company, that the purpose of that company in making the new commodity tariff and rate on corn was to obtain the traffic from Chicago for export at Philadelphia and Baltimore. It may be true as claimed, that in order to obtain corn for European shipment at those points it was necessary for the railroads reaching them from Chicago to measurably meet the rates by lake and canal or lake and rail between Chicago and New York. On a twenty cents basis per hundred from Chicago to New York the rate to Philadelphia and Baltimore under the established rule of differentials to those cities would be eighteen and seventeen cents respectively. The lines from Chicago having adopted this basis and rate from Chicago, undoubtedly influenced by the action of the Baltimore & Ohio Company, made it apply also to Indianapolis and vicinity. The result was to greatly disturb and injure the milling industry in and about Indianapolis, which used corn produced in a section so situated as to the lakes that it did not get the benefit of water transportation, and was not the corn that the Baltimore & Ohio and other railroad companies competed for against water transportation. They desired the corn that naturally sought market at and through Chicago, not corn usually collected for the mills at Indianapolis. There was therefore no occasion for reducing the rate on corn below the rate on the direct products of corn, at Indianapolis, for any purpose that the railroads had in view at Chicago. The question is not whether the reduction in rate on corn from Chicago without like reduction on the products of corn was justifiable on the score of water competition. The question is limited to the propriety of the discrimination between the two kinds of traffic from Indianapolis on that ground. On this question we think that water competition was not shown to make it necessary.

The question remains, whether the action of the respondent companies in making a reduction of rate on corn from Indianapolis to seaboard points by taking it out of the classification with the products of corn and making a commodity tariff violated the third section of the Act to regulate commerce. One provision of the section is: "That it shall be

unlawful for any common carrier subject to the provisions of this Act to make or give undue or unreasonable preference or advantage to any particular person, company, firm, corporation, or locality, or any particular description of traffic, in any respect whatsoever, or to subject any particular person, company, firm, corporation, or locality, or any particular description of traffic, to any undue or unreasonable prejudice or disadvantage in any respect whatsoever."

The facts on this point are as follows: The respondent companies and others operating railroads as common carriers from Indianapolis to the seaboard had previous to the said reduction of last July always included corn and the direct products of corn in the sixth class and thereby given them the same rate. About five years ago the complainants entered upon the business at Indianapolis of buying and grinding corn and selling its direct products in the east or near seaboard points where the principal market for such products exists. Others there and in that vicinity had engaged in the same industry, making investment in plant for the purpose, and all relying upon a continuation of the same classification that the railroads had made and maintained from the first. Suddenly a discrimination was made between corn and its direct products amounting to four and one-half cents per hundred pounds in the rate from Indianapolis to the seaboard. The market for the product being in the east, it is plain that it would be folly to grind the corn in the west and transport the product when four and one-half cents per hundred pounds could be saved by transporting the corn to the eastern market and grinding it there, when presumably it could be done at about the same cost at both points. It did not need the testimony of witnesses, although it was produced, to prove that the discrimination in rates between corn and its products brought serious injury to the milling industry at the point where the discrimination took effect; it is plain that the result could not be otherwise. The complainants' investment, made in reliance upon a condition which the railroads had established, became practically valueless. The railroads had and would continue to have the whole transportation of the corn traffic either as raw corn or in the

product from that point. It was equally valuable to them whether in the one form or in the other. As before stated, water competition was not operative at Indianapolis to the extent required under previous rulings of this Commission, in order to amount to full defense in this case. *Harwell et al. v. C. & W. R. R. Co. et al.* (1 I. C. C. Rep., 236). The said change in classification and rate was, so far as shown in this case, without necessity from the railroad standpoint, and arbitrary. It is said in the brief in behalf of the Baltimore & Ohio Company, that the old classification was wrong and always had been, and violated some of the conceded principles that should control classification, and that railroads should not be held to existing classifications that were false and wrong in principle. It may be conceded that this last claim, as a general proposition, is sound, and it is true that the manufactured product of corn is commercially a little more valuable than the corn before manufacture; but, notwithstanding that fact and that value is one of the elements that enter into classification, yet the proof is abundant in this case that the increased value of the product over the corn was counterbalanced by other advantages in the transportation of the product, and on the whole the transportation of each at the same rate was equally valuable to the carrier. Of course this Commission would not hold that a classification that was wrong should be adhered to, although its change might work injury to individuals whom the wrong classification had unduly favored. But such is not this case. The point here is, whether where an existing classification and rate are not shown to operate injuriously to the carrier from a given point, or to give undue advantage to shippers, a change is justifiable that materially injures an important industry and a class of shippers at that point who have there built up the industry in reliance upon the continuation of a previous classification and rate first established and long maintained by the carriers themselves without complaint from any quarter. We think not. We think it subjects the persons engaged in the industry and the locality and the particular traffic to unreasonable disadvantage.

It is to be kept in mind that the petitioners do not com-

plain of a reduction in rate, but of a discrimination between the two kinds of traffic, the effect of which has been as disastrous to them as though there had been an advance in rate sufficient to materially cripple their industry. Two facts stand undisputed: first, the discrimination; second, the fatal effect upon the industry. We think in addition the evidence utterly fails to show necessity for the change in order to secure the traffic, or to show any resulting advantage to the carrier. We have, then, a disadvantage to persons in a given locality as a result of the discrimination in transportation without necessity or even advantage to the carrier or any reason founded on the character or conditions of the traffic. We think such a disadvantage is unreasonable within the meaning of the term as used in the third section of the Act.

We think that but little importance should be attached to the statement that the price of corn in the territory of its production as reached by the complainants as aforesaid went up after the discrimination in rate was made between corn and its products. The facts are too meagre and the period of time too short to warrant conclusions as to cause and effect in the premises. Indeed, in view of the fact that the eastern millers could avail themselves of a water rate on corn so low—lower even than the reduced rate by rail—it would seem as though a rise in price of corn in the territory described in the testimony could not have been occasioned by the reduction of rate by rail carriers. Values are affected in so many ways that it is often difficult to find the true cause for the constant fluctuations, and it is unsafe to attribute cause to any single circumstance. Testimony as to it must be mere opinion, and the variance of opinions is often commensurate with the number expressed. But even if the reduction in rate enhanced the price, it does not affect the real question in this case, because, as before stated, the complaint here is not of unreasonableness of rate, but of discrimination in rates between the raw corn and its direct products. Under the old classification and rate the miller was just as well off whether his mill was at Indianapolis or New York. He now wants the same advantage restored to him, unless good cause

can be shown why it should not be restored. Because he has happened to locate his mill at Indianapolis instead of New York he does not want its value destroyed by the arbitrary discrimination of a carrier which its interest does not require. The discrimination adopted affects him the same whatever may be the price of corn.

But respondent's counsel maintained further that there was no such relation between corn and the direct products of corn; that the rate on one should be fixed with reference to the rate on the other; that where one compares the actions of railroad companies in respect to the various kinds of traffic the standard of comparison is clearly recognized; but where one undertakes to compare traffic of one kind with traffic of another the standard is lost and no reliable guide remains; that carriers comply with their duties and obligations under the law, if, in so far as the products of corn are concerned, they treat all dealers in that product alike; that it was never the intention that the rates on a certain kind of traffic should be fixed with reference to the rates on a different kind of traffic; and that if men engaged in a certain kind of employment are all treated alike in respect to their uniform product, and the facilities which are given to them; and that if equality of service is given as between two localities, engaged in the same business, that this is all that the Interstate Commerce Act undertakes to do.

The real point of this argument is that whatever the other facts may be, aside from the fact that corn and the direct products of corn are two different articles, and however much disadvantage the thing done by the carrier may operate upon the shipper, and however much it may violate the general fundamental idea of equality that underlies the Act to regulate commerce, yet the Act is so framed that there can be no remedy in this case. The point raises the legal question of construction pure and simple, irrespective of consequences upon shipper or carrier.

This leads to careful inspection of the language of the clause which is quoted above. The thing declared to be unlawful is, to subject a person, locality, or traffic to undue or unreasonable prejudice or disadvantage in any respect.

whatever. If we are correct in our conclusions upon the other points above discussed, this unlawful thing has been done in substance. The answer made is that it has not been technically done within the meaning of the Act, because in the treatment of corn by the defendants there has been no discrimination as to any particular person or locality or description of traffic. This is perhaps true, if it is proper to ignore all relation between corn and the corn product, and to assume that in interpreting the statute in its application to the facts in the case, we are to see nothing but corn.

If this is the true idea of the statute, then it must be so held, notwithstanding it would plainly give carriers such power of manipulation in classification as to utterly destroy and render nugatory the real intent and purpose of the enactment. As stated in *Pyle & Sons against The East Tennessee, Virginia & Georgia Railway Company*, 1 I. C. C. Rep., 465, "classification is but a means of arriving at a rate."

The scope of the language of the statute is to be specially noted: "Any undue or unreasonable prejudice or disadvantage *in any respect whatever*." This is certainly broad enough to cover the case in hand. It is easy to see a close relation between corn and corn meal; how the price of one must depend on the price of the other, and how quickly benefits or injuries to localities and individuals must result from a change of transportation rate on either alone.

By process of grinding corn takes a new form, but its essential properties are not thereby changed. It is still, in substance, the same article of food. In the construction of a remedial statute a tribunal is not to seek for narrow views that would defeat the underlying principle of the enactment. If a person, locality, or traffic has been subjected by an act of the carrier to a disadvantage not imposed by impelling and controlling considerations for which the carrier is not responsible, we think the above clause of the statute applies notwithstanding this act of the carrier working the wrong is not limited in terms in the tariff-sheet to particular persons or particular description of traffic. True, the classification and rate complained of is general in form, applying to all persons alike; but in its operation only the individuals of a

certain locality suffer from it. It is as to them as essentially a disadvantage as though it was in terms limited to them. In the construction of a clause of a statute containing numerous and varied remedial provisions it must be weighed in connection with the entire enactment. Its meaning and intent must be deduced from the language used, but the general spirit and purpose of the enactment as a whole should be considered in arriving at the scope of each clause. Keeping in mind this as well as other rules of construction, it seems to us plain that, as to the provision now under consideration, any unjustifiable act of a carrier that subjects a person, locality or particular traffic to the prejudice or disadvantage specified, is within its prohibition.

These are our views on the leading points raised and discussed in this case, upon the evidence produced. Its determination has been delayed by various causes; among them was this: Other cases are pending before this Commission, raising the same general question, but under different circumstances and conditions, and it was hoped they might be heard and decided with this case, as is common where similar cases are pending at the same time, and thereby some general principles broader than those here discussed might be settled. But such other cases have not yet been fully heard and submitted for decision; and we have not felt at liberty to delay this case longer. It should not be overlooked, in view of the pendency of the other cases alluded to, that we have only dealt with this case upon the restricted grounds upon which it was tried, basing the decision upon the precise facts found and about which there was but little dispute.

Our conclusion is that an order issue requiring the Pennsylvania Railroad Company and the Pennsylvania Company and the Baltimore & Ohio Railroad Company to make the transportation rate from Indianapolis to seaboard points on corn and on its direct or immediate products, viz., ground corn, cracked corn, corn meal, grits, hominy and feed, the same, and that the discrimination in rate now existing between said points between corn and the direct or immediate

products of corn, as aforesaid, be discontinued by February 20, 1890; and that the cause be retained by the Commission for the purpose of citing in as parties the other railroad companies leading from Indianapolis to Eastern points, viz: The Lake Erie & Western Railroad, the Ohio, Indiana & Western Railway, the Cincinnati, Hamilton & Indianapolis Railroad, the Cleveland, Cincinnati, Chicago & St. Louis Railway, and the Louisville, New Albany & Chicago Railway, unless they comply with the above order in their transportation rates on said articles within the time above specified.

**THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY
COMPANY v. THE CHICAGO & ALTON RAILROAD
COMPANY.**

Complaint filed August 7, 1889. Answer filed September 14, 1889.
Heard at Chicago, Ill., September 30 and October 1, 1889. Decided
February 14, 1890.

Where property is to be transported by rail by continuous and uninterrupted carriage from one station to another, there may be sound and legal reasons for making a charge for the through transportation which is less than the sum of the locals for the transportation of like property from point to point between such stations :—

But where property is billed from one station to another with the understanding that it is to be unloaded at an intermediate station, and that whether it shall be reloaded for further carriage will depend upon the volition of the shipper or of any one who may have become purchaser, the case does not fall within the reasons governing rates on through transportation, and the carrier is not at such intermediate points entitled to have the carriage protected as a through shipment as against competitors.

Thomas F. Withrow, for complainant.

William Brown, for defendant.

REPORT AND OPINION OF THE COMMISSION.

COOLEY, Chairman :

The petition in this case represents that complainant is a common carrier subject to the Act to regulate commerce, having its principal office in Chicago, in the State of Illinois, and engaged in the transportation of passengers and property by railroad between points west of the Missouri river and said city of Chicago.

That the respondent is also a common carrier engaged in the transportation of passengers and property by railroad between points in the State of Missouri and points in the State of Illinois, and as such is also subject to the Act to regulate commerce.

That the line of respondent from Kansas City to Chicago is competitive with a portion of complainant's through line between said cities.

That a certain tariff entitled "Joint Through-freight Tariff Number Four" was issued on behalf of the railroad companies named therein, stating rates on live stock between points in Kansas, Indian Territory, Missouri, and Nebraska, and Chicago, St. Louis, and common points therewith, taking effect April 1, 1889; which tariff, on file in the office of the Commission, is referred to. The names of both complainant and respondent appear as parties to said tariff; complainant's line west of the Missouri river being there designated as the Chicago, Kansas & Nebraska Railway. A large number of points west of said Missouri river are marked with a dagger, and a note referred to thereby reads as follows: "Chicago, Kansas & Nebraska rates named to and from Chicago are good only in connection with the C., R. I. & P. Railway."

That said tariff was in effect from April 1, 1889, to July 12, 1889, when the same was superseded by certain similar tariffs, which are also referred to, and which bear the following notation stamped in red ink upon their face, to wit: "Joint rates exist only between such lines as have divisions of the through rate."

That since April 1, 1889, no divisions of through rates have existed between the complainant and respondent, and that the intention and effect of said notations was to advise the public of the fact that a through line did not exist for traffic from the line of complainant west of the Missouri river, over the Chicago & Alton Railroad, to Chicago.

That the course of business in the handling of live cattle traffic is as follows: Shipments of cattle are received in Kansas and Indian Territory, etc., by the complainant's line, which are there consigned by the shippers to Chicago, at the rates named in the above-mentioned tariffs, with the privilege of stopping off at Kansas City, Missouri. If the cattle stopped under this privilege are not sold at the Kansas City market, their transportation is resumed and continued to Chicago on the original billing. The respondent has claimed the right,

however, in case such cattle are not sold at Kansas City, to receive the same for transportation to Chicago upon terms whereby no more was paid for the total carriage than the through rate under which they were originally billed by complainant. The through rate, up to a very recent time, was less than the sum of the local rates from originating points to Kansas City and from Kansas City to Chicago.

That cattle carried by complainant and sold at Kansas City under the aforesaid privilege were charged the local rate from the points of origin to Kansas City, and the claim of the respondent to accept such cattle for the remainder of the carriage to Chicago, and to protect the original through rate, made it necessary for the respondent to pay the local rates of the complainant to Kansas City, and to receive for its portion of the carriage the remainder of the through rate, which was a sum considerably less than the amount of its local rate from Kansas City to Chicago, as then established and existing, the same being shown in respondent's tariff on file, which is referred to.

And complainant says whatever may have been the rights of the respondent in the matter of protecting the through rate upon cattle sold in Kansas City, originating upon lines with which it had in existence a joint through rate under said tariff number four, that so far as cattle originating upon complainant's line are concerned, the respondent had no right whatever to carry the same, under any pretence of a joint through rate, but was only entitled to carry the same at its open, public rate aforesaid, in force between Kansas City and Chicago. Nevertheless, the respondent published a circular reading as follows: "Chicago & Alton Railroad Company Freight Tariff Number 537, taking effect June 24, 1889. The rates to Chicago on live stock, car-loads, from stations on the Chicago, Kansas & Nebraska Railway, except those named below, named in Joint Freight Tariff No. Four, dated April 1, 1889, and amendments or subsequent issues thereof, will apply *via* Kansas City and the Chicago & Alton Railroad, subject to the rules and regulations governing shipments of live stock." (The excepted points being twenty-three points not material to this controversy). Complain-

ant is informed and believes that since the issue of said circular, respondent has accepted for transportation at Kansas City, live stock in car-loads, which originated at stations on complainant's line west of the Missouri river, and has protected the rates named in said through joint freight tariff number four; and proof of such transactions will be made upon the hearing. Complainant avers that respondent had no right whatever to give any notice as party to a joint through freight tariff with complainant in which it was not in fact a party, and in respect to which complainant has already declined to become a party with respondent. And complainant avers that all shipments of live stock that have been accepted and carried by respondent upon the terms named in its said circular, have been transported in violation of Section VI of the Act to regulate commerce, which provides that "when any common carrier shall have established and published its rates, fares and charges in compliance with the provisions of said section it shall be unlawful for such common carrier to charge, demand, collect or receive from any person or persons a greater or less compensation for the transportation of passengers or property, or for any services in connection therewith, than is specified in such published schedule of rates, fares and charges as may at the time be in force."

And complainant insists that as to the live stock originating on its line west of the Missouri river, respondent has no right to transport the same, except under its own local tariff from Kansas City to Chicago.

Wherefore complainant prays that respondent be required to cease and desist from said violations of the Act to regulate commerce, and for such other and further order as the Commission may deem necessary in the premises.

Respondent answered the complaint, admitting that the parties respectively are common carriers as stated, and are competitors as alleged; admits the issue of the Joint Through-freight Tariff Number Four, and that the names of the parties respectively appear to said tariff; that the complainant's

line west of the Missouri river was in said tariff designated as the Chicago, Kansas & Nebraska Railroad, and that it is operated by the complainant.

Further answering, respondent says that the notation referred to, on said joint tariff, that Chicago, Kansas & Nebraska rates named to and from Chicago are good only in connection with the Chicago, Rock Island & Pacific Railway, was not placed thereon with the consent or approval of respondent; and it denies that either the said Chicago, Kansas & Nebraska Railroad Company, or the complainant, had any right to make any such limitation, or to deny to respondent the equal facilities for the interchange of traffic, as is implied by said notation.

Respondent admits that said joint through-freight tariff number four was in force from April 1st to July 12th, 1889, and that it was superseded as stated in the complaint; and that the superseding tariffs bear the notation stamped in red ink upon their faces, stated in the complaint. But it avers that said notation was not stamped thereon with the approval or consent of respondent, but that, on the contrary, it was done against its wishes; and that the intention on the part of the parties procuring it to be done was to injure the trade of respondent.

That such notation is unintelligible to the average shipper, and does not give a clear understanding to the public as to the lines over which freight will be transported at the rates therein mentioned; but, on the contrary, is calculated to perplex and hinder the shipper with regard to the through transportation of his property.

And respondent says that with a view to the public convenience and for the protection of its through business, it caused to be printed, published and filed with this Commission the circular set out in the complaint.

Respondent admits that since the first of April, 1889, the complainant and the said Chicago, Kansas & Nebraska Railroad Company have declined to make a fair and just division of the through rate with respondent, on traffic originating west of Kansas City and destined for Chicago, and to afford to respondent the same facilities for the interchange of busi-

ness as it affords to others standing in the same relation to them as does respondent.

And respondent denies that by such course complainant has the legal power to deprive respondent of the right and privilege of quoting to customers the agreed through rate for traffic which the shipper wishes transported over the lines of complainant and respondent, from initial points west of Kansas City, through Kansas City to Chicago.

And respondent maintains and insists upon its right to quote the agreed through rate to shippers and to protect the same in order that the shipper may have the same advantages as he would have by through routes, notwithstanding, by such unfriendly action on the part of complainant towards respondent, respondent may be unable to obtain from it a just and fair proportion of the through rate; and notwithstanding in some instances the proportion of such through rate which respondent receives may be less than its full local rate from Kansas City to Chicago.

And respondent says that notwithstanding the pretense of complainant, under the name of the Chicago, Kansas & Nebraska Railroad Company, that it will not make good the said published through rate on any other line than the Chicago, Rock Island & Pacific Railroad to Chicago, it has not denied the same to all others as it has to respondent, but, on the contrary thereof, has made divisions with another competitor of respondent, to wit, the Chicago, Santa Fe & California Railroad Company, since the said notations were made, and while it has refused to do so with respondent.

And, touching the course of business at Kansas City, respondent says that Kansas City and Chicago are the two great cattle markets of the west and center of the country, and that heretofore it has been the custom of common carriers with roads leading west from Kansas City to join with roads lying east of Kansas City and reaching the city of Chicago, in making a through tariff of rates from points west from Kansas City to Chicago, to do so with the privilege of either stopping and disposing of stock at Kansas City and terminating the shipment there, or of resuming the shipment on to Chicago, after testing the Kansas City market; and this

privilege was extended to any purchaser who might buy the stock at Kansas City, under the same billing and at the same through rate; and the through rate was then divided between the two carriers on such basis and upon such proportions of the through rate as the carriers would agree upon; in fixing which said proportions the carriers were not governed by the local tariff on either road as determining its proportion of the whole. In further explanation, respondent says that the shipper was accustomed at the initial point to give shipping directions as to the route, and the road reaching such initial points, or, as it is in other words said, originating said business, would bill the said shipment by such route as the shipper might direct, at the regular through rates, and would allow the secondary carrier such proportion as might be agreed upon.

Respondent says that the proportion which would fall to the secondary carrier taking the shipments from Kansas City to Chicago has been in some instances more, and in other instances less, than the local rate from Kansas City to Chicago; and the whole transaction was regarded as a single one, and the rate as a single rate, from the initial to the terminal point, irrespective of the fact that the same was to be, and actually was, divided between the two carriers in payment of the service of each. That under this usage the several roads lying east of Kansas City were accustomed to seek business west of Kansas City and procure it to be billed by their respective roads, and to protect the shipper in the agreed through rate, irrespective of whether or not by so doing it would be enabled on such through business to obtain for such services as great a sum as its through rate from Kansas City to Chicago.

That it was upon this basis, and to meet this condition of existing circumstances, that the several tariffs named in the petition were issued, to each of which respondent and its several competitors aforesaid were parties.

Respondent says that such arrangements, whilst injuring no one, have been beneficial alike to the shipper, the Kansas City market and the several companies; and by it the shipper was enabled to exercise his pleasure as to the route he

would ship by, without being compelled to pay on through shipments two local rates; and was at the same time enabled to exercise his choice between two markets; and to take the first and offer to the purchaser as an inducement the benefit of his contract for a through rate, which the purchaser might enjoy or abandon at his pleasure.

Respondent says that this course of business continued without interruption until about the 1st day of April, 1889, when one of its competitors, the Chicago, Rock Island & Pacific Railway, under the name of the Chicago, Kansas & Nebraska, caused to be placed on said tariff of rates the notation specified in the complaint; since which time the said railway company has been unwilling to make a just and fair division of the through rate upon stock billed over the Chicago, Kansas & Nebraska and respondent, to Chicago, by way of Kansas City. And in order to protect its customers and patrons in agreed through rates from points on said Chicago, Kansas & Nebraska, to Chicago, respondent has been compelled to pay to the Chicago, Kansas & Nebraska local rates to Kansas City, whereby the proportion of the through rate which respondent receives is less than a reasonable one. And respondent has been compelled to submit to such unequal division in order to protect its other business and accommodate its patrons, as well as the Kansas City market; though it alleges that the said Chicago, Kansas & Nebraska Railway does not abide by its notation in its dealings with other roads, and it continues its through traffic rate with respondent from initial points through Kansas City to St. Louis, and to accept a fair proportion of the through rate on such traffic.

Respondent further says it has been the custom for many years, and is now, for dealers in live stock at Kansas City to purchase stock arriving at that point by the various lines leading from the west and southwest, and concentrate their shipments upon one line east of Kansas City, each dealer usually patronizing some one line east of that point, and the lines east and west from Kansas City protecting the through rate on such shipments when they were originally consigned through to Chicago. To restrict such shipments of live

stock to the roads east of Kansas City which have lines west of Kansas City, simply because they brought the business to Kansas City, would result in a monopoly of the live-stock business by two lines, namely, the Chicago, Rock Island & Pacific Railway and the Atchison, Topeka & Santa Fe Railroad; as the practical working of the policy would be not only to give those lines the business that they bring to Kansas City, but also the control of the great bulk of the business that arrives at Kansas City by lines that have no road east of Kansas City. Such dealers would desire their shipments to be forwarded from Kansas City together and would not consent to have lots broken up.

Respondent denies the allegation that cattle shipped by complainant and sold at Kansas City under the aforesaid privilege, were charged the local rate from the points of origin to Kansas City when such cattle were originally billed through, except when its action was applied to respondent; and it avers that complainant has so billed cattle as that the respondent, as one of the through carriers, would be charged the local rate and be made to pay the same if such shipment should be continued to Chicago by way of respondent; whereas, if the same were shipped to Chicago by way of the Chicago, Santa Fe & California Railroad, another and much less rate, being a fair proportion only, would be accepted by complainant for transporting the cattle to Kansas City. In order to meet and protect itself against such a condition, respondent has been compelled at times to pay the complainant the local rate, or more than its fair proportion of the through rate.

Respondent further says that under the usage of the carriers, the through business coming east from points beyond Kansas City and through that point to Chicago, is not regarded as local traffic from Kansas City to Chicago and subject to the local tariffs, and that the object of complainant is to compel respondent to charge local rates from Kansas City to Chicago upon such traffic; whilst complainant, with its favored associates, may treat and charge for the same upon the basis of through traffic, as through rates; thereby depriving respondent of any participation in such traffic,

and enabling complainant, together with the competitors of respondent which it favors, to fix the through rate at such sum as they please, and thereby enjoy a complete monopoly of the business.

Respondent says that whilst regarding its own interest in this behalf, it also desires to favor its shippers to the same extent as carriers having roads both east and west of Kansas City do, so as to give to Kansas City the benefits which can be legitimately obtained by granting to such shippers the privilege of stopping and selling in that market, and of resuming the shipment at the through rate; and that its customers and patrons may be served by it at as good rates as can be obtained from any other carriers.

As to the insistence of complainant, as to live stock traffic originating in the territory adjacent to its line west of the Missouri river, that respondent has no right to transport the same except under its local tariff, respondent says that complainant has no legal right to exclude others from entering such field and inducing the shipment thereof by way of Kansas City to Chicago; and that such shipments are often procured by the influence of others than the road so occupying the territory; and that it believes a sound public policy requires that carriers should be permitted to make through contracts for the same, and when so made, to protect and carry out the same in strictness and good faith, irrespective of whether in each particular instance the transactions should prove profitable or not.

Such is the issue made upon the record, and upon which the parties respectively have presented considerable evidence. The facts in dispute, however, do not seem to be numerous. The questions presented for the consideration of the Commission were questions of law rather than of fact, and they resolved themselves into this: whether a course of business admittedly engaged in by the respondent was in violation of law and of the rights of complainant. To show how it injured the complainant, its own course of business was explained and the object of the proceeding was seen to be to protect that course of business from what was claimed to be an unfair and an illegal invasion by respondent.

It appears from the showing that complainant has a line of road extending from Kansas City, Missouri, to points to the east thereof, including Chicago. There is also a line which it manages and operates coming into Kansas City from the west. Kansas City and Chicago are the great live stock markets in the interior, and the road of complainant to the west of the first-named city brings to it a great number of cattle, some of which are marketed there, while others are taken thence by complainant's main line to Chicago. Complainant has competitors in this business both east and west of Kansas City, and among those with a line from Kansas City to Chicago is the respondent. The several competitors agree between themselves what the rates of freight shall be from points westerly of Kansas City to that point, and they also agree upon the rates through that city to Chicago; the through rates from points west of Kansas City to Chicago not being the same as the sum of the locals. It has for a number of years been customary for the several carriers to allow shippers of cattle from points west of Kansas City to bill through to Chicago at the through rate, but at their option to unload at Kansas City and try the market there before proceeding further. If the shipper found it to his advantage to sell at Kansas City, he did so, and then paid instead of the through rate at which the cattle were billed, the local rate to that point; if he did not sell, he reloaded them and forwarded them to Chicago, paying there the through rate, precisely as he would have done had the cattle not been stopped in Kansas City at all. The testimony, we think, warrants us in saying that if some part of a total consignment were marketed at Kansas City, and the deficiency thus caused were supplied by purchase at that place, the same would be received and forwarded at the through rate from the point of origin, precisely as it would have been had no change in the identity of the consignment taken place. The course of business has also allowed a purchaser at Kansas City to re-ship from thence to Chicago on the original bill at the through rate, precisely as though there had been no change of ownership.

The complainant very naturally desires to have the benefit

of the transportation from Kansas City to Chicago of all such cattle brought by its own line to the former place as are re-shipped thence to the more eastern market; the respondent which has no line to the west of Kansas City desires to participate in the carriage. To exclude such participation, the complainant declines to agree with respondent upon any division of the through rate, and insists that if the respondent receives the cattle at Kansas City and transports them thence to Chicago it can lawfully only do so at the regularly established local rate between those cities; the shipment, so far as respondent is concerned, being nothing but a local shipment. The respondent, on the other hand, insists that its shipment of the cattle from Kansas City to Chicago is no more a local shipment than it would be if made by complainant; the original shipment having terminated at Kansas City with only a possibility of renewal, and the renewal when made being no different in its incidents when made by the carrier which brought the cattle to Kansas City than when made by any other. It is therefore insisted by respondent that when complainant makes a re-shipment from Kansas City to Chicago for a charge which, added to what it has already received, makes an aggregate equal to the agreed through charge from the point of origin of the freight to Chicago, the respondent with precisely the same legal justification may take the freight from Kansas City to Chicago for a like sum; the shipment from Kansas City being no more a part of a through transportation from the original point of shipment in the one case than it is in the other.

Such is the point of controversy involved in the case. It was suggested on the hearing that the Commission should confine its attention to the legality of the course of business as conducted by the respondent, and that it was immaterial to the controversy whether the practices of the complainant as shown were or were not in compliance with the law. It will be seen, however, that the case necessarily presents the question whether the course of business of complainant, which the proceeding seeks to defend and protect, is any more in conformity with law than that of the respondent. If both are legal, the proceeding must fail, because then the

respondent is guilty of no legal wrong; if both are illegal, the complaint must equally fail, since in that case there is nothing in which the Commission can protect the complainant, and the purpose in instituting the proceeding appears to be one that the law cannot sanction.

We have no doubt of the right of carriers to agree upon through rates which shall be different from and lower than the sum of the locals. This principle has frequently been considered and applied in cases passed on by the Commission. (*Lippmann v. Ill. Cent. R. R. Co.*, 2 I. C. C. Rep. 584.) The action of the carriers in this case in fixing upon through rates from points west of Kansas City to Chicago does not appear to be the subject of just criticism. But these through rates are rates supposed to be fixed for through carriage, and they differ from the sum of the locals because they are supposed to involve less cost and less labor to the carriers than do the local shipments. There is supposed to be but one loading and one unloading. There is supposed to be less time occupied with men and equipment than would be necessary if the same freight were taken the same distance with one or more stoppages and unloadings on the way. It is for these reasons that the lesser aggregate charge for one shipment is made in practice and is justified in the law.

It is impossible to say upon the evidence in this case that when the complainant receives live cattle at points west of Kansas City, at through rates to Chicago, but with an understanding that they are to be unloaded at Kansas City to try the market there, there is in point of fact a through shipment from the point of origin to Chicago. So far from that being the case, there is no understanding that there shall be any through shipment at all, and whether there shall be one or not is understood to depend entirely upon the state of market at Kansas City, and upon the option of the purchaser if the cattle are there sold. If the cattle are finally transported to Chicago, there is not only more than the one loading and unloading, but there is also necessarily some loss of time beyond what would be expected to take place in case of a through shipment. The identity of the cattle may to some

extent be changed; the original shipper may cease to have anything to do with the transportation of the freight at that point; and it is pure fiction that treats the transportation as one and indivisible from the point of origin to the point which finally, at the option of the parties, proves to be that of ultimate destination.

Whether this course of business which admits of the stoppage by the way for purpose of testing a market, which may not prove to be the ultimate market, is one which can be justified as against shippers from Kansas City whose freight originated at that point, we shall not discuss on this record. Nobody is here questioning the right thus to allow freight to be stopped *in transitu* and then taken up and carried through to a point of final destination on the through rate that would have been charged had no such stoppage taken place. Both these parties are acting upon an assumption that it may be rightful thus to allow the stoppage to try the intermediate market; and respondent does not dispute the legality of what the complainant is doing; it only insists that its own course of business is in all legal particulars the same with that of the complainant, and, assuming the legality of the complainant's course of business, its own course of business is equally justified. We think this position is unanswerable. The re-shipment by the complainant under the circumstances attending its course of business from Kansas City to Chicago is no more a part of a through transportation than is the shipment of cattle brought into Kansas City from points to the west and taken thence by the respondent. The fiction that the case of re-shipment is a part only of one transportation is just as applicable to the one case as to the other, and comes just as near representing a fact. The complainant says very justly that it has never agreed with respondent upon any division of through rates from points on its line west of Kansas City to Chicago, and that respondent can not for itself determine what the division shall be. But this contention does not fully cover the case. It would cover the case if the transportations which are brought in question were through transportations in fact; but when it appears that they are not through transportations, whether the carriage

from Kansas City to Chicago is by one party or by the other, the question of agreement upon the matter of division of through rates seems to be foreign to the case.

Without further allusion to important and interesting questions that are suggested by the record, but not directly presented, we are forced to the conclusion that complainant is not entitled to protection in the course of business shown by its complaint and by the evidence, as against the respondent; and that the complaint must therefore be dismissed.

THE PITTSBURGH, CINCINNATI & ST. LOUIS RAIL-
WAY COMPANY v. THE BALTIMORE & OHIO
RAILROAD COMPANY.

Complaint filed July 10, 1889. Answer filed July 31, 1889. Heard
November 15, 1889. Briefs filed January 11-13, 1890. Decided
February 21, 1890.

Passenger excursion rates are required to be published according to the
provisions of section 6 of the Act to regulate commerce.

Party-rate tickets are not commutation tickets, and when party rates are
lower than contemporaneous rates for single passengers they consti-
tute discrimination and are illegal.

J. T. Brooks, for complainant.

John K. Cowen and *Hugh L. Bond, Jr.*, for defendant.

A. J. Dittenhoefer, Delos McCurdy, Augustus Vanderpoel,
for theatrical managers.

REPORT AND OPINION OF THE COMMISSION.

VEAZEY, *Commissioner* :

The substance of the petition is that the parties hereto are
common carriers subject to the Act to regulate commerce,
and are competitors in business; that the respondent has
adopted and has in operation "party rates," so called, where-
by parties of ten or more persons traveling together on one
ticket are transported over the respondent's lines of road
between stations located thereon at two cents per mile *per*
capita, which is less than the regular rate for a single person,
said rate being about three cents per mile; that said com-
pany also sells round-trip excursion tickets, good between
points on its lines, at less than the rate for ordinary tickets,
without publicly posting in its ticket offices or elsewhere the
rates at which said tickets are sold; and charging that this
practice of the respondent is in violation of the Act to regu-
late commerce, and for this reason is not participated in by

the complainant, and thereby traffic is diverted from petitioner's lines to those of the respondent, to the damage and loss of the petitioner; and the petitioner prays that the respondent may be ordered to withdraw from its lines of road, upon which business competitive with that of the petitioner is transacted, the so-called "party rates," and to discontinue giving such rates in the future, and also requiring respondent to discontinue the practice of selling excursion tickets at less than the regular rates, unless the rates on such tickets are posted in its offices as required by the Act to regulate commerce.

The respondent answered, admitting the facts substantially as charged, but denying that they were in violation of the Act to regulate commerce or any other law, and claiming that the excursion tickets are such as are mentioned in the 22d section of that Act, and that the Act does not require or contemplate the posting of rates at which such excursion tickets are sold, and that it would be practically useless, if not impossible, to post them.

It was urged on behalf of the petitioner, the same as alleged in the complaint, that the so-called party rates are not warranted by law and are demoralizing in effect, and necessarily work a discrimination against the single passenger who purchases his ticket at the regular office, and in favor of the customer of the ticket broker. It was also insisted that under the Act to regulate commerce it is required that excursion rates shall be posted in the same manner as in the case of the ordinary rate.

Counsel appeared both in behalf of the respondent railroad company and of the managers of theatrical companies, who are claimed to be especially interested in maintaining the so-called "party rates."

Counsel for petitioner offered no evidence. Some evidence was taken in behalf of the respondent, tending to show that the practice here complained of as to party-rate tickets was in effect for several years prior to the enactment of the Act to regulate commerce, and that such practice obtained in the different countries of Europe, and that theatrical companies are especially favored in that regard there; that unless the

law allows the issuance of such tickets theatrical companies can not afford to travel, and the present practice of first-class companies going from the great cities through the country to the smaller places would have to cease, and thereby the country at large outside of the great centres, would be deprived of large, first-class theatrical entertainment.

No question was made on the trial but that the parties to this case were common carriers subject to the Act to regulate commerce, or that the respondent issued the so-called "party-rate" tickets to all persons alike who desired to buy a ticket for ten or more persons; but the respondent company did not sell such a ticket to any one for a less number than ten, and the fact is so found. Neither was it disputed that the respondent had issued excursion tickets without posting notices of the excursion rate in its several stations as required by law in case of the regular rate.

It is found that the practice of selling party rates existed at the time that the Act to regulate commerce was enacted, and had so existed for several years previously; that under authority of law the practice obtains in Europe to a greater or less extent of transporting theatrical companies at reduced rates below the regular rates of carriage; that although these so-called party-rate tickets are offered to all persons alike, they are not used to great extent by others than traveling theatrical companies. The saving to the theatrical companies under the party-rate system is very great, owing to the great number and large size of such traveling companies. It was claimed that that saving was so great that there could only be a profit in the business of such companies by having the privilege, and this Commission is not prepared to say, from the evidence in the case, that it is not so. Neither is it prepared to say to what extent it would interfere with or stop the business of traveling theatrical companies to require the payment of full regular rates for persons and scenery.

Counsel for the respondent railroad company claimed that under the party-rate ticket method there was no discrimination, neither between different theatrical managers nor between theatrical business and other kinds of business, because the offer of such tickets was open to everybody

alike. Therefore he insisted there was no violation of the provisions of the second and third sections of the Act to regulate commerce, which are based on the idea and principle of equality of rate and service to all persons alike from common carriers who are public servants. By the party-rate system the carrier says to all persons in substance: If you want one ticket for the transportation of ten or more persons on the same train to the same destination you can have it at a specified reduced rate below the regular rate. Is this an unjust discrimination, or the giving of undue or unreasonable preference or advantage to the purchaser of such a ticket (within the meaning of the provisions of the second and third sections of the Act), as against the persons, from one to nine inclusive, who have to pay the higher regular rate for precisely the same transportation and service? The answer may be aided somewhat by, another question: Why may a party of ten or more persons have individually a lower rate than a party of nine or less, from a common carrier which is bound to treat all patrons equally who have the same amount and quality of service? The design of the Act to regulate commerce was to put each individual, in the matter of transportation, on exact equality, with only such exceptions as the Act itself specified. It was not a new idea in law, for it had always been recognized as a sound legal proposition, though violated in practice, that a common carrier must treat all persons alike under similar circumstances and conditions. It is difficult to see how this individual equality is preserved when in a car-load, say of nineteen persons, all starting from the same point and having the same destination, ten of them pay two cents per mile each, and the other nine three cents.

If tickets can be sold at reduced rates for parties of ten, there is no limit either in number or in rate for which they may be sold; the law may thus be rendered a meaningless enactment and its purposes wholly defeated at the discretion of carriers. It would seem that, standing upon the general provisions and theory of the Act, this form of ticket cannot be sustained.

But the Act provides, section 22, "that nothing in this Act

shall prevent . . . the issuance of mileage, excursion, or commutation passenger tickets;" and it is here claimed that the party rate is but a form of commutation. If that is so, then it must be sustained, notwithstanding it is in itself a violation of and opens the doors to abuses of the fundamental idea of the enactment.

The question, therefore, is, How is the word "commutation," as used in said Act, to be construed?

The witnesses in this case threw but little light on the subject as to the definition of the term "commutation," or whether a party-rate ticket properly came under that class. The official correspondence and records in the hands of the Commission do, however, easily settle the question that a one-way party ticket was not at the time the Act was passed, and has not since been, regarded or treated in official railroad circles as embraced under the head of commutation. We have found nothing to the contrary prior to the Act, and such is the great preponderance of the evidence, although not universal, since the Act took effect. A one-way party ticket entitles the number of persons specified thereon to transportation of the quality indicated by the ticket, without stop-over, from and to the stations named on the ticket, within the limit specified. It is used for irregular travel between points varying with the applications of parties traveling one way. A commutation ticket entitles the holder (one person) to one first-class passage, without stop-over, for each number indicated on, or each coupon attached to, the ticket, between the stations named, in either direction, and is available to any one under the conditions and within the limit specified in the contract. It is a kind of ticket largely used by suburban residents traveling between their homes and the larger cities, such as business men, school children, employees, etc. It has various forms, but is uniform in substance. It is a ticket generally on sale regularly by railroads, while party rates are commonly made to suit the particular conditions governing each party. We think the best expert railroad authority is to the above effect, and also that party-rate tickets are an entirely distinct class from commutation tickets, and are for a different class of travel.

It is not claimed that this ticket comes under either of the other classes excepted in the Act, viz: Mileage and excursion.

The argument that the party rate ought to be sustained, as otherwise traveling theatrical companies will have to retire from the business, which the evidence tended strongly to show might be the case, and all places except comparatively few large cities would be deprived of this kind of first-class entertainment, is one for the consideration of Congress under a proposition to amend the Act. But as the ticket cannot be sustained on the ground of equality of service and rate and is not embraced within the excepted classes, this Commission has no power to furnish relief to the theatrical companies.

It is urged that party rates were in force at the time the Act to regulate commerce was passed. We have no doubt of this from the evidence and official records in this office; but it affords no argument for the contention of the respondent railroad or the theatrical managers, but the reverse, because as Congress did make exceptions to the operation of the Act, the not including this form of ticket in the exceptions indicates a purpose to exclude it, under the common law rule that the express mention of one thing implies the exclusion of other things not mentioned.

One of the reasons that may have influenced Congress in not providing for such tickets is the facility with which they might be used for speculative purposes. If generally issued by railroads they would be a most convenient and inviting method for evading the law in the hands of ticket brokers. The Commission has heretofore had occasion to consider tickets of this character and then condemned their use. See Memorandum, 2, I. C. C. Rep. 649. The Commission there said: "The practice is vicious in conception and demoralizing in effects; it necessarily works a discrimination against the single passenger who purchases his ticket at the regular ticket office and in favor of the customer of the broker." It is plain that if the party rate ticket should be added to the exceptions to the operation of the Act specified in section 22, for the benefit of theatrical companies, it ought

to be under regulations that would prevent it from becoming a source of evasion of the law by ticket speculators.

Another point urged in the defense is that when a discrimination is not between persons who are competitors in the same line of business, it is not in violation of the Act, and that this applies to passengers as well as to freight transportation. The Commission considered and answered this claim in the holding in *Smith v. The Northern Pacific Railroad Company*, 1 I. C. C. Rep. 208, to the effect that the rule under which passenger transportation should be conducted requires absolute equality of payment from all persons enjoying the same accommodations.

The other complaint in the petition is that the respondent road does not print and post its excursion rates, as required for regular rates. The charge is admitted, but it is claimed to be unnecessary under the provisions of section 22.

Section 6 of the Act to regulate commerce, after providing for the printing and posting of schedules of rates, fares and charges, &c., says :

“And when any such common carrier shall have established and published its rates, fares and charges in compliance with the provisions of this section, it shall be unlawful for such common carrier to charge, demand, collect or receive from any person or persons a greater or less compensation for the transportation of passengers or property, or for any services in connection therewith, than is specified in such published schedule of rates, fares and charges as may at the time be in force.”

We think it is too plain to require discussion that under this provision, excursion rates as well as others must be printed and posted as in case of other rates. The only ground upon which the respondent can stand is that the provision of section 22, to the effect that nothing in the Act shall prevent the issuance of excursion tickets, takes such tickets from under the operation of the provision last above quoted. But the view of this Commission has always been that in the issuance of mileage, excursion and commutation passenger tickets, the other provisions of the Act do apply

so far as preserving equality as to the method of issuing them ; as illustrated in *Larrison v. Chicago and Grand Trunk Railway Company*, 1 I. C. C. Rep. 147, where it was held that when a railroad company sells mileage tickets, it must sell them impartially to all the public who apply for them ; and that their sale to a particular class of persons at lower rates than are charged to others is unjust discrimination. Inasmuch as excursion rates must be general and open to all alike, there can be no embarrassment in requiring them to be posted like other rates.

The respondent railroad company must therefore be notified to immediately cease and desist from selling said party-rate tickets and ordered to print and post excursion rates according to the provision of section 6 of the Act to regulate commerce.

F. B. THURBER, M. N. DAY, E. A. DOTY, H. K. MILLER, W. B. TIMMS, B. F. SHORES, COMMITTEE OF THE NEW YORK BOARD OF TRADE AND TRANSPORTATION, v. THE NEW YORK CENTRAL AND HUDSON RIVER RAILROAD COMPANY, THE NEW YORK, LAKE ERIE AND WESTERN RAILROAD COMPANY, THE DELAWARE, LACKAWANNA AND WESTERN RAILROAD COMPANY, THE PENNSYLVANIA RAILROAD COMPANY, AND THE BALTIMORE AND OHIO RAILROAD COMPANY.

THOMAS L. GREENE, AS MANAGER OF THE MERCHANTS' FREIGHT BUREAU AND AS REPRESENTING TWO HUNDRED AND EIGHTY-ONE RETAIL MERCHANTS IN SIX DIFFERENT STATES, v. THE SAME DEFENDANTS.

FRANCIS H. LEGGETT & CO. v. THE SAME DEFENDANTS.

Hearings at Washington for taking testimony, January 24 to January 28, 1888, inclusive.—Briefs filed in behalf of the different parties, at various times down to February 4, 1889.—Decision filed March 14, 1890.

Classification of freight for transportation purposes is in terms recognized by the Act to regulate commerce and is therefore lawful. It is also a valuable convenience both to shippers and carriers.

A classification of freight designating different classes for car-load quantities and for less than car-load quantities for transportation at a lower rate in car-loads than in less than car-loads is not in contravention of the Act to regulate commerce. The circumstances and conditions of the transportation in respect to the work done by the carrier and the revenue earned are dissimilar, and may justify a reasonable difference in rate. The public interests are subserved by car-load classifications of property that, on account of the volume transported to reach markets or supply the demands of trade throughout the country, legitimately or usually moves in such quantities.

Carriers are not at liberty to classify property as a basis of transportation rates and impose charges for its carriage with exclusive regard to their own interests, but they must respect the interests of those who may have occasion to employ their services, and conform their charges to the rules of relative equality and justice which the act prescribes.

Cost of service is an important element in fixing transportation charges and entitled to fair consideration, but is not alone controlling nor so applied in practice by carriers, and the value of the service to the property carried is an essential factor to be recognized in connection with other considerations. The public interests are not to be subordinated to those of carriers, and require proper regard for the value of the service in the apportionment of all charges upon traffic.

A difference in rates upon car-loads and less than car-loads of the same merchandise between the same points of carriage so wide as to be destructive to competition between large and small dealers, especially upon articles of general and necessary use, and which under existing conditions of trade, furnish a large volume of business to carriers, is unjust and violates the provisions and principles of the Act.

A difference in rate for a solid car-load of one kind of freight from one consignor to one consignee, and a car-load quantity from the same point of shipment to the same destination consisting of like freight or freight of like character from more than one consignor to one consignee or from one consignor to more than one consignee, is not justified by the difference in cost of handling.

Under the Official Classification, the articles known in trade as grocery articles are so classified as to discriminate unjustly in rates between car-loads and less than car-loads upon many articles, and a revision of the classification and rates to correct unjust differences and give these respective modes of shipment more relatively reasonable rates is necessary, and is so ordered.

Simon Sterne, Charles F. Beach, Jr., and Thomas L. Greene,
for the complainants.

Frank Loomis, for N. Y. C. & H. R. R. Co.

James A. Buchanan, for N. Y., L. E. & W. R. R. Co.

M. Taylor Pyne, for D., L. & W. R. R. Co.

James A. Logan, for Penna. R. R. Co.

John K. Cowen and Hugh L. Bond, Jr., for B. & O. R. R. Co.

J. H. McGowan, for Mississippi and Missouri Rivers Jobbers' Association; also for Hoe & Fork Manufacturing Association of the United States, west of the Allegheny Mountains.

S. E. Payne, for Hoe & Fork Makers' Union.

J. W. Walker, for St. Joseph, Mo., Board of Trade.

D. B. Henderson, for Iowa State Jobbers' & Manufacturers' Association, and citizens of Iowa, and signers of petitions of 1,300 retail grocery houses of Iowa.

Peter A. Dey, for the Executive of the State of Iowa.

Newton Dexter, for Retail Merchants' Association of New York.

William K. Gillispie, for Association of Wholesale Grocers of Pittsburgh, Pa.

J. C. O'Donnell, for Retail Grocers' Association of Pittsburgh, Pa.

Robert A. Stevenson, for Pennsylvania Retail Grocers' Association.

John Henry Keene, Jr., for signers of four petitions of Baltimore, Md., merchants.

REPORT AND OPINION OF THE COMMISSION.

SCHOONMAKER, *Commissioner*:

The complaints in these cases all relate to the same subject-matter, the classification of certain freight in car-loads, and in less than car-loads, but present it in somewhat different aspects.

In the case of Thurber and others the complaint is as follows:

"The undersigned, representing the New York Board of Trade and Transportation, comprising in its membership upwards of one thousand firms and individuals, respectfully submit the following complaint against the New York Central and Hudson River R. R.; New York, Lake Erie and Western R. R.; Delaware, Lackawanna and Western R. R.; Pennsylvania R. R., and Baltimore and Ohio R. R., for unjustly discriminating against small shippers of some varieties of goods, by placing less than car-load quantities in a higher class than car-loads, by which small shippers are forced to pay from 16 per cent. to 60 per cent. more for their transportation than large shippers who ship the same goods

in car-loads. We claim that this action violates provisions in sections one and three of the Interstate Commerce law, and virtually continues under the guise of classification the unjust discriminations against both localities and individuals, formerly practiced by means of rebates and drawbacks, which the Interstate Commerce law designs to prevent. This question, as affecting the Eastern Trunk lines, embodies important points not heretofore presented to your honorable body, by the complaint of the merchants of St. Louis against the Missouri Pacific road. The west-bound classification of the Eastern Trunk lines, in force prior to the enactment of the Interstate Commerce law, made but few and unimportant car-load differentials (about one hundred and seven) but the new classification adds about one thousand articles to this number, some of which are very important, and the differences in rates made between small and large quantities are excessive. This was the more unnecessary and unreasonable on the part of the Eastern Trunk lines, because more than half of their west-bound cars go empty, and the volume of miscellaneous freight transported by them being large, it enables them to a very great extent, if they so desire, to fill their cars with full loads of assorted freight. The principle is the same as in the coal cases which have been brought to your attention, and which, if carried to its logical end, would concentrate the business of the roads in the hands of but one shipper or a few shippers in every place. If this principle is to be tolerated, it should be made as uniform as possible. At present it is not applied to some of the most important branches of the trade, the others thus being discriminated against, as well as individuals. The classification of freight touches the principles upon which rates of transportation are based at almost every point, and is worthy of your fullest and most careful consideration. As at present practiced, although there are two parties in interest, shippers and carriers, the latter dictates absolutely to the former in secret session, no publicity being allowed to their deliberations, and no opportunity being allowed the other party in interest to be heard. We believe a full investigation of this question will show that the present classifica-

tion of the trunk lines is unjust, against public policy, and against even the interests of the railroads themselves, which, although generally taking the position that their business is an intricate one, beyond the comprehension of the ordinary business man or citizen, and that their methods should not be questioned or interfered with by law-makers, have frequently admitted that regulations imposed upon them by law in the interest of the public were not only right but unexpectedly beneficial.

“We respectfully petition for a hearing upon this complaint against the before-mentioned lines at such time as will be convenient to your honorable board, and such relief as may appear after investigation to be reasonable and just.”

In the case of Greene, Manager, &c., the complaint is as follows:

“The undersigned, on behalf of 281 merchants in the States of Michigan, Illinois, Indiana, Ohio, Pennsylvania and Delaware, begs leave respectfully to present to your favorable consideration the accompanying petitions. On behalf of petitioners I make complaint to your honorable body that the present classification (copy herewith) in use on west-bound traffic by the railroads known as the Trunk Lines, viz., the New York Central and Hudson River, The Delaware, Lackawanna & Western, The Pennsylvania, The Baltimore & Ohio and The New York, Lake Erie & Western, as regards the unjust differences now made in classification and freight charges between car-loads and less than car-loads on the same articles between the same points, is in violation of the sections of the Interstate Commerce law forbidding undue preferences to individuals or localities. On behalf of petitioners I pray your honorable body to order a restoration to the west-bound tariffs of the principle of uniform rates without regard to quantity of freight, which has been in force from the seaboard for twenty years previous to April, 1887. If a hearing is desired upon the matter, I respectfully ask on behalf of petitioners that we be made parties thereto in connection with the N. Y. Board

of Trade and Transportation and any other boards or individuals interested."

In the case of Leggett and others the complaint is as follows:

"*First.* That the railroad companies commonly known as the "Trunk Lines," which have their eastern termini at the city of New York, namely, the Baltimore & Ohio, the Pennsylvania, the Delaware, Lackawanna & Western, the New York, Lake Erie & Western, and the New York Central & Hudson River Railroads, and their connections, have violated the provisions of the Interstate Commerce Act, as follows:

"*Second.* That the said railroad companies have published, established and issued a classification of property in common use amongst them. Said classification is annexed hereto, and forms a part of this complaint.

"Said classification declares their intention and purpose to transport property in full car-loads with a minimum weight of 20,000 pounds upon the first three classes, and a minimum of 24,000 pounds for the last three classes. That property in a less quantity than said minimum weights is to be charged for in a class higher and at a higher rate of charges than property in car-loads of their respective minimum weights.

"Your petitioners complain that the said railroad companies, by reason of affixing charges by the said classification, discriminate in favor of shippers who forward a minimum car-load against a smaller shipper; that by so doing they give an undue preference, and that, therefore, the said railroad companies are acting in violation of section two of the Interstate Commerce Act, which is, 'that if any common carrier . . . shall directly or indirectly, by any special rate, rebate, drawback, or other device, charge, demand, collect or receive from any person or persons a greater or less compensation for any services rendered or to be rendered for the transportation of property than it charges any other person or persons for doing for him or them a like and contem-

poraneous service . . . under substantially similar circumstances and conditions, &c.;" and in violation of section three, namely, 'that it shall be unlawful for any common carrier subject to the provisions of this Act to make or give any undue or unreasonable preference or advantage to any particular person, company, firm, corporation or locality, or any particular description of traffic, in any respect whatsoever, or to subject any particular person, company, firm, corporation or locality, or any particular description of traffic, to any undue or unreasonable prejudice or disadvantage in any respect whatsoever.'

"Your petitioners therefore pray that your honorable body issue a decree requiring said common carriers to cease and desist from such violation of said Act, and for such other and further relief as in your judgment may be just and proper."

The respondents in the three cases answered jointly, and their answers, which are substantially alike in each case, are as follows :

"1. The respondents are not advised that the petitioners represent the New York Board of Trade and Transportation, or that said board comprises in its membership upwards of one thousand firms and individuals, and therefore ask that the petitioners be held to due proof thereof.

"2. The respondents deny the other allegations of the petition and each and every of them, except as hereinafter stated. They say and allege that in March, 1887, the 'Joint Committee,' so called, being a committee composed of representatives of the 'Trunk Line Association,' so called; the 'Central Traffic Association,' so called, and certain other railroad companies, after careful consideration, adopted, to take effect April 1st, 1887, 'The New Official Classification,' superseding 'The Official Classification of East-Bound Freight,' 'The Official Classification of West-Bound Freight,' 'The Middle and Western States Classification of Freight,' and 'The Joint Merchandise Freight Classification' in force prior to April 1st, 1887, in different parts of the country and

upon various traffic, which classification was accepted by the respondent companies and other railroad companies and was used by all the railroad companies in the territory east of the Mississippi river and north of the Ohio river, embracing one-half of the railroad mileage and eighty per cent. of the railroad tonnage of the United States; that subsequently the said 'Joint Committee,' after careful consideration, the hearing of representatives of various commercial interests affected, and the consideration of their suggestions and all the facts known with respect to the operation of the said official classification adopted to take effect April 1st, 1887, adopted the 'Official classification No. 2,' to take effect July 15th, 1887, which Official Classification No. 2 was accepted by the respondent companies and the other railroad companies operating in the territory aforesaid, and is now in use; and the respondent companies allege that said 'Official Classification No. 2' is just and reasonable and, upon information and belief, satisfactory to the great majority of the commercial interests in the territory aforesaid.

"3. The respondents further allege and aver that 'the distinction in rates as between car-loads and smaller quantities is readily understood and appreciated.'

"That the difference in charge made as set out in said classification between car-loads and smaller quantities is based upon fair and equitable considerations, alike just to the shipper and carrier, the result of careful and intelligent thought and consideration by the officers of the respective companies respondents and of said joint committee, and is just and reasonable; that among the reasons which necessitated the distinction in rates as between car-loads and smaller quantities is the fact that the average cost to the carrier of handling small shipments is proportionally much greater than that of car-load lots, experience having shown that an average loading of mixed car-loads at New York does not exceed five tons per car having a capacity of not less than twelve and often fifteen or more tons; that to retain small packages until a quantity equivalent to a car-load for any given destination would be received, would involve an unrea-

sonable delay in shipment objectionable to the shipper, who would look to the company for damages, and impossible to the carrier because of want of storage facilities in the meantime; so that the railroads in transporting mixed car-loads must haul seventeen tons for every five tons of paying freight (the empty car itself weighing twelve tons), while in car-load freight the paying freight exceeds the dead weight. To this is to be added the loss of time and expense incident to stoppages of whole trains while small packages are being unloaded at many places, whereas cars containing full loads can be readily dropped from the train at their destination.

“4. The respondents further aver that at no season of the year, on any of the lines of the respondent companies, do more than twenty per cent. of their cars go west empty, while on the lines of some of the respondents the loaded cars west-bound are equal to the number east-bound, and at certain seasons of the year the west-bound traffic preponderates. An empty car leaving New York is often more valuable to the companies than one partially loaded to a western point, because of the opportunity to obtain a full load at an intermediate point.

“5. The respondents further say that if any incidental detriment may happen to a few individual shippers in the east as the result of this proper and necessary practice upon the part of the respondents (which these respondents deny), it is much more than overcome by the advantages accruing to jobbers in the cities and large towns in the interior of the country, who buy in the east in large quantities and transport to their respective cities for the purpose of distributing in small quantities within a territory naturally tributary to their interior cities.

“6. Your respondents further answer that they have caused to be constituted a special committee of railroad officers, whose duty it is to consider all communications from shippers suggesting changes in classification and to accord them ample hearings and to submit its recommendations thereafter as to such matters to the railroads interested, as to

which fact the public has been duly informed; that at the last meeting of said committee over thirteen hundred communications of this character received consideration, and that many reductions in classifications were made in accordance therewith.

“Wherefore these respondents pray that the said petition may be dismissed.”

After the service of the answers the following amendment to the complaints was filed:

“The several petitioners in the above-entitled proceedings, pursuant to rule 10 of the Rules of Practice, leave having been first duly obtained by this amendment to be incorporated in and to be regarded as a part of their original petitions, respectfully and severally allege that the respondent railway companies, by making and enforcing the car-load rates of which complaint is made in their original petitions, and which operate to grant a lower rate for shipments of or in excess of twenty thousand or twenty-four thousand pounds weight, than is exacted for shipments of lesser quantities, make an unlawful discrimination of great magnitude in favor of larger centres of population, trade and business in Pennsylvania, Ohio, Illinois, Missouri, Indiana and Minnesota, which take of the staples set forth in the petition herein by the car-load from single consignors to single consignees as against towns and cities nearer to New York from which the shipments are made, and which contain few or no individual consignees to whom car-load shipments are made, which lesser shipments are made at such higher price to the shorter distance under substantially similar circumstances and conditions than those shipped for the longer distance, thus violating so much of the fourth section of the Act to regulate commerce as provides ‘that it shall be unlawful for any common carrier, subject to the provisions of this Act, to charge or receive any greater compensation in the aggregate for the transportation of passengers or of like kind of property, under substantially similar circumstances and conditions, for a shorter than for a longer distance over the same line, in

the same direction, the shorter being included within the longer distance.'"

The complaints as filed apparently assailed the lawfulness and justice of any difference in rates founded upon a classification for car-loads and less than car-loads. Upon the hearing, however, this broad ground was not taken, and it was conceded that as to certain staples that move from the east to the west, or from the west to the east, or from the south to the north, like coke, coal, lumber, grain of every kind, tobacco, or cotton, it is proper that discrimination should be made between car-loads and less than car-loads, because these stuffs move in car-loads, and the natural, normal shipment is the car-load, and they have from the first been shipped in the larger rather than the smaller quantity.

The controversy was therefore limited in its immediate objects to certain specified articles of merchandise described by the complainants as staple groceries, and which are as follows: Cider in glass; cider in wood; iron nuts, bolts and nails; sugar; paint in barrels; liquors at valuation; prunes in boxes, kegs or bags; prunes in barrels or casks; crockery; fish, salted or pickled; canned goods; cement in barrels or casks; soda and saleratus; pickles in barrels or casks; pins; salt in barrels or sacks; molasses, and wine.

In respect to these articles the contention of the complainants is that their normal mode of shipment is not in car-loads, but in smaller quantities called commercial packages, and that either no discrimination should be made in rates between car-loads and less than car-loads, or that if any difference is permissible on account of greater cost of handling and of transportation in the case of the smaller quantities, it should be so small as not to consume the commercial profit on the goods. It is also contended that no difference should be made between a car-load from one consignor to one consignee, and a car-load from several consignors to several consignees from the same point of origin to the same point of destination.

The testimony taken is very voluminous, and covers generally the whole field of transportation in the territory of the

Official Classification in car-load and less than car-load quantities. Only such portions of this testimony need be referred to as seem necessary to the disposition of these cases. The general facts deemed material and important are as follows:

Car-load classification for west-bound business from the seaboard was about a dozen years ago limited to a few articles, but has been extended to other articles from time to time, until the number so classified is large. In 1877 about twenty-four articles had a car-load classification; in 1880 about fifty articles; in 1884 about one hundred and forty articles; in 1887, immediately prior to the taking effect of the Act to regulate commerce, about one hundred and sixty articles. The new classification under the Act to regulate commerce embraced about nine hundred articles that might be carried in car-load quantities at lower rates than less quantities. The car-load classification in existence prior to the Official Classification, which took effect April 1, 1887, did not include the articles in contention in these cases, and hereinbefore specified. There was nominally no distinction, therefore, in rates on these articles for car-load and less than car-load quantities, although the evidence shows, and the fact is notorious, that rebates, special rates, and disregard of tariff schedules were so common that the published tariffs were scarcely *prima facie* evidence of the actual rates charged.

A much larger proportion of the articles in question is understood to be shipped under the present classification in less than car-loads than in car-loads. One jobber states the car-load shipments to be one-eighth. Sometimes full car-loads are carried made up of consignments from one or more consignor to one or more consignees at the same destination, and these are usually taken at car-load rates. Such shipments are made to Pittsburgh, Columbus, Cleveland, Fort Wayne, Indianapolis, Chicago, St. Louis, and several other western cities.

The classification and rates for the articles in question before April, 1887, and since that date, are shown by the following table:

Table of Comparisons of Freight Rates on West-bound Traffic before and after April 1st, 1887. On basis New York to Chicago.

Articles.	Before April, 1887.		After April, 1887.		Rate.	Am't of increase in rates for small lots since April, in cts. per one hund'd lbs.	Am't of present increase for small lots over car loads, in cents, per one hundred lbs.	Percentage of advance in rates for small lots over car loads at present.
	Class regardless of quantity.	Rate p'r hund'd lbs.	Class when in car loads.	Rate per hund'd lbs.				
Cider in glass ..	2	60	3	30	30	30	30	116%
Cider in wood ..	4	35	5	30	50	15	20	66%
Iron nuts, bolts and nails..	4	35	5	30	35	—	5	16%
Sugar ..	5	25	6	25	25	10	10	40
Paint in barrels ..	4	35	5	30	35	—	5	16%
Liquors at valuation ..	4	35	4	35	50	15	15	43
Prunes in bx's, k'gs or b'gs	3	60	5	30	65	5	35	116%
Prunes in barrels or casks.	4	35	5	30	50	15	20	66%
Crockery ..	4	35	5	30	35	—	5	16%
Fish, salted or pickled ..	5	25	6	25	30	5	5	20
Canned goods ..	4	35	5	30	35	—	5	16%
Cement, barrels or casks..	5	25	6	25	35	10	10	40
Soda and saleratus ..	4	35	4	35	50	15	15	43
Pickles in barrels or casks	4	35	5	30	50	15	20	66%
Pins ..	2	60	3	50	75	15	25	50
Salt in barrels ..	5	25	6	25	30	5	5	20
Salt in sacks ..	5	25	6	25	35	10	10	40
Molasses ..	5	25	5	30	35	10	5	16%
Wine ..	4	35	6	25	35	—	10	40

Testimony was given to show the cost of many of the articles in question to the seaboard jobber, and the profit arising from the business. This testimony tended to show that the average cost of handling the business, including rents and all direct and incidental expenses, is five per cent. on the price paid by the jobber for his goods, and that the commercial profit on many articles is very small, and on some no profit but sometimes a loss. For example, according to some witnesses, the values, gross profits, and net profits per hundred pounds on certain articles are stated as follows:

Articles.	Value.	Gross profit.	Net profit.	Difference in rate, C. L. & L. C. L.
Coffee ..	\$20 00	\$1 00	\$0 00	\$0 10
Sugar ..	6 50	13	00	10
Prunes in casks ..	4 00	20	....	20
Prunes in boxes ..	11 00	1 10	55	35
Standard canned tomatoes	3 00	15	....	05
Molasses ..	3 75	37½	19	05
Salted fish. .	7 00	70	35	05

These are admitted to be approximations and averages, and, as the testimony of the witnesses varied considerably, and the market prices fluctuate, exact statistics cannot be deduced from the evidence.

Facts presented on behalf of the respondents are found as follows :

Prior to April, 1887, when the Act to regulate commerce took effect, the principal classifications in use in the territory now covered by the Official Classification were as follows :

1. The distinctive local classifications of the several railroad companies, differing in many respects from each other.

2. The through west-bound classification, generally known as the Trunk Line West-bound Classification, for through traffic originating at seaboard cities and destined to western termini, Buffalo, Erie, Pittsburgh, Parkersburgh, &c., and to a number of competitive points, trade centres, or railroad junctions west of those terminals.

3. The East-bound Classification, which alone applied to east-bound traffic originating in the territory east of Chicago and the Mississippi river, west of the western termini of the Trunk Lines, and north of the Ohio river, destined to the western termini of the Trunk Lines and to the points east of those termini.

4. Traffic between competitive interior points in the States of New York, Pennsylvania, New Jersey, Delaware, Maryland, Virginia, and West Virginia, interchanged between the several Trunk Lines and connecting roads, was governed by the Joint Merchandise Freight Classification, which also applied to the local traffic of certain roads.

5. The Middle and Western States Classification applied to traffic between competitive interior points west of the western termini of the Trunk Lines, east of the Mississippi, and north of the Ohio river.

6. Traffic between certain points in the western States

east of the Mississippi river and certain southern competitive points, was governed by a separate classification.

These several classifications were superseded on the 1st day of April, 1887, by what has since been known as the Official Classification. This classification was made to meet the requirements of the Act to regulate commerce with regard to rates. It covers all the territory lying east of the Mississippi river and north of the Ohio river, extending to the Atlantic ocean. It is the same for both east-bound and west-bound traffic, and from one station to another. The territory includes about ten thousand stations, and about forty-seven thousand miles of railroad, and applies on 131 railroads.

The present classification applies from New York City alone to an average of 3,015 points on the five principal lines of road leading from that city, being in detail as follows: New York Central & Hudson River Railroad, 3,157; New York, Lake Erie & Western Railroad, 3,200; Pennsylvania Railroad, 3,100; Delaware, Lackawanna & Western Railroad, 2,874; Baltimore & Ohio Railroad, 2,742. Through rates are published to these points by the chief roads named. Under the old classifications in force to April 1st, 1887, the average number of points to which through rates were published by the same roads was 713.

The number of articles classified in car-loads and less than car-loads in the several classifications in use prior to April 1st, 1887, was:

Classification.	Number of articles classified.	Car load classes.	Percentage of C. L. to total.
East-bound trunk line.....	1,763	713	44
West-bound trunk line.....	1,021	137	14
Middle and Western States....	1,689	905	54

In the Official Classification No. 2, of July 15th, 1887, there are 2,178 classified articles, 996 of which have car-load rates, being 46 per cent.

Changes or modifications have been made in the Official Classification, as follows: The first took effect April 1st, 1887;

the second July 15th, 1887; the third February 1st, 1888; the fourth August 15th, 1888; the fifth February 18th, 1889; and the sixth August 15th, 1889. Other changes, relating to a few articles, have also been made by supplement from time to time. In the Official Classification No. 6, August 15th, 1889, and now in effect, there are 4,018 classifications.

It contains 3,536 less than car-load and 2,044 car-load classifications, many articles being in both. Of car-load classifications only, there are 482; of less than car-loads only, 1,974; and of less than car-loads with lower rate when in car-loads, 1,562.

The classes and the rates (New York to Chicago) of several of the articles in question at the present time are as follows:

Articles.	C. L.		L. C. L.	
	Class.	Rate.	Class.	Rate.
Sugar	6	.25	4	.35
Molasses	5	.30	4	.35
Canned goods.....	5	.30	4	.35
Prunes, in boxes and casks.....	4	.35	3	.50
Salt fish	6	.25	5	.30
Salt.....	6	.25	5	.30
Rice	6	.25	4	.35
Coffee.....	6	.25	4	.35

The rates upon the same articles (New York to Chicago) immediately prior to April 1st, 1887, were as follows:

Sugar and molasses, without distinction as to quantity, 18 cents per hundred pounds; canned goods, in any quantity, 35 cents; prunes in boxes, any quantity, 60 cents; prunes in casks, any quantity, 35 cents; salt, any quantity, 25 cents; rice, any quantity, 35 cents; coffee, car-loads 25 cents, less than car-loads 35 cents. Upon sugar the car-load rate has been advanced 7 cents, the less than car-load rate 17 cents. On molasses the car-load rate advance is 12 cents, and on the less than car-load rate the advance is 17 cents. On canned goods there is 5 cents reduction in the car-load rate, and the less than car-load rate remains the same. On prunes in boxes the car-load rate is 35 cents, being 25 cents lower, and the less than car-load rate is 50 cents, being 10 cents lower. On prunes in casks the car-load rate is un-

changed, and the less than car-load rate is advanced 15 cents. On salt fish the car-load rate is unchanged, and the less than car-load rate advanced 5 cents. On salt the only change is an advance of 5 cents on the less than car-load rate. On rice the only change is a reduction of 10 cents on car-loads. On coffee there is no change.

In the official classification there are only six classes, and the difference in rates between the first and second classes is ten cents per hundred pounds, between the second and third and third and fourth fifteen cents per hundred pounds, and between the last three five cents each per hundred pounds.

In the two other classifications at present in force, the Western, and that of the Southern Railway and Steamship Association, there are, respectively, ten classes, with less difference in rates between them. Both car-load quantities and less quantities have frequently a special class in this classification. The rates per hundred pounds on the articles in question, in this classification, from Chicago to Kansas City, 488 miles, or about half the distance from New York to Chicago, are as follows:

Articles.	Car loads.	Less than car loads.
Sugar .....	.25	.28½
Molasses .....	.25	.28½
Canned goods .....	.25	.28½
Prunes, in boxes .....	.30	.40
Prunes, in casks .....	.30	.30
Salt fish .....	.25	.28½
Salt .....	.15	.30
Rice .....	.25	.28½
Coffee .....	.25	.28½

These rates are proportionately higher than under the Official Classification, but the differences between car-loads and less quantities, with the exception of salt, are less.

A large amount of testimony was given to show the relative average cost of handling and loading freight in car-loads and less than car-loads, of its transportation and unloading, of the average loads in cars carried respectively, of the relative earnings from car-loads and less than car-loads, and of

the movement of empty cars. The testimony is too voluminous to set forth more than some of the results shown.

The cost of loading 1,769 cars of which six per cent. was car-load freight, at Duane Street, New York, was shown to be 62.1 cents per ton. At Dock No. 6, Jersey City, the cost of loading miscellaneous freight was 58.3 cents per ton. At Dock No. 5, Jersey City, the cost of loading car-load freight, exclusive of lighterage and only for receiving, sorting, loading in cars, and billing the freight, was 16.3 cents per ton. On this basis the cost of loading miscellaneous freight is from 42 to 46 cents per ton, or from 2.1 cents to 2.3 cents per hundred pounds, greater than loading car-load freight.

The relative cost of unloading and delivering car-load and less than car-load freight at Chicago was shown to be 23 cents a ton for less than car-loads and 9 cents per ton for car-loads, or seven-tenths cents per hundred pounds.

With reference to transportation alone, exclusive of loading and unloading, the following results appeared respecting west-bound shipments over six of the Trunk Lines for a period of fifteen days each in six different months from June to August, 1887, inclusive, in car-loads and less than car-loads: Less than car-loads—whole number of cars, 5,307; number of consignments, 72,678; total weight, 52,513,313 pounds; average weight per car, 9,895 pounds; average weight of consignment, 723 pounds. Solid car-loads—whole number of cars, 1,776; total consignments, 1,963; total weight, 52,577,398 pounds; average weight per car, 29,604 pounds; average weight of consignment, 26,784 pounds.

Six hundred and forty-one cars carried less than one ton each, with 1,538 total consignments and an average weight per car of 756 pounds, and an average weight per consignment of 315 pounds.

The average work for a single day during this period was 274 cars of miscellaneous freight, containing 1,524 tons in consignments averaging 648 pounds to 4,713 consignees at 1,452 places; and 111 cars of car-load freight, containing 1,638 tons, each car to one consignee and a single destination, and averaging 29,514 pounds per car.

During certain days in October, 1887, in which 11 cars

were sent west from New York over some of the Trunk Lines, with miscellaneous freight to certain large cities, averaging 30,419 pounds to a car, there were sent on the same days over the same lines 768 cars with miscellaneous freight consisting of 15,217 consignments, and averaging 11,615 pounds to a car; 69 cars with one consignment only, 10,596 pounds to a car, and 98 cars with 235 consignments, averaging 779 pounds to a car.

The general average of car-load shipments from the tables in evidence was nearly 15 tons for car-loads and about 5.8 tons for less than car-loads or miscellaneous freight.

The evidence gives an illustration of two trains hauling the same number of gross tons, including weight of cars and load, the cars weighing 11 tons each. One train of 25 cars, loaded with $14\frac{1}{2}$ tons each, carries $362\frac{1}{2}$ tons of paying freight. The other train of 38.6 cars, loaded with $5\frac{1}{2}$ tons each, carries 212.3 tons of paying freight. The cost of hauling the freight in the first case would be 0.276 cents per ton per mile, and in the latter 0.471 cents per ton per mile.

The relative earnings from miscellaneous and car-load freight, based on average loadings, and the miscellaneous freight made up of different classes, as usually shipped west from New York, of $5\frac{1}{2}$ tons to a car, and a car-load of 19 tons of freight of fifth class, was shown, on a division of the Pennsylvania railroad, to be \$22.03 from the miscellaneous, and \$49.40 from the car-load. On the Lake Shore, from Buffalo to Toledo, from average loadings of 4.79 tons miscellaneous, and $13\frac{1}{2}$ tons sixth-class car-load freight, the earnings from miscellaneous were \$17.07 and from car-load \$27.00 per car. From Cleveland to Chicago, on the same road, the earnings, based on average loadings of miscellaneous freight of different classes, and sixth-class car-load freight, were shown at tariff rates to be \$10.40 from miscellaneous and \$30.85 from car-load.

The local rates, or rates for short distances, under the official classification, are low, and differ less between the classes than for long hauls like that from New York to Chicago. For example, the rates on the Pennsylvania railroad, on the six different classes, for a distance of thirty miles are, respec-

tively, in cents : 12, 10, 9, 7, 6, $5\frac{1}{2}$; for fifty miles, 18, 14, 12, 8, 7, 6 ; for ninety miles, 24, 19, 16, $12\frac{1}{2}$, $10\frac{1}{2}$, 9. On the Lake Shore railroad, for thirty miles : $8\frac{1}{2}$, 8, 8, 7, 6, $4\frac{1}{2}$; for fifty miles, 12, 11, 10, $8\frac{1}{2}$, 7, 6 ; for one hundred miles, 21, 19, 15, 12, 10, 8

With regard to empty cars, there is no doubt that a considerably greater proportion of empty (box) freight cars goes west than east over the Trunk Lines, and that a much greater number of only partially loaded cars goes west than east ; although the evidence shows that at times large numbers of empty cars have been brought from different points on the Trunk Lines to New York to carry west-bound traffic. The east-bound tonnage is much larger in volume than the west-bound, though the latter is mostly of higher classifications. In 1887 the east-bound Trunk Line tonnage was, in round numbers, 11,000,000 tons, and the west-bound 2,000,000 tons. For a period of four months in 1887 the number of box cars forwarded west from Buffalo on the Lake Shore road, loaded and empty, was in the proportion of one empty to about 46 loaded.

The argument in behalf of the complainants is, in substance, as follows : That the difference between car-load and less than car-load quantities is *prima facie* unjust discrimination against the latter, to be justified by the respondents both as to rates and classification. That a lower rate for a car-load than for less than a car-load upon the same article, transported over the same line, in the same direction, and for the same distance, violates the provision of the first section of the Act that all transportation charges shall be reasonable and just. That the differences in rates also violate the third section forbidding unreasonable preference and advantage. That they are also in violation of the fourth section of the Act. That the discrimination complained of cannot be justified upon the ground that the higher charge is upon way or local traffic ; or that local business is more expensive to the carrier ; or that the lower charge inures to the benefit of certain classes or communities ; or that the present rates and classification merely continue the former order of business in reference to through and local traffic ; or that the shipper

who gets the lower rates loads and unloads the freight; or that the matter is adjusted upon what is known as the principle of wholesale and retail. That if any discrimination is permissible in rates between car-loads and less than car-loads on the freight in question, there is no justification for the wide discrimination in the present tariffs and classifications as between one consignor to one consignee and many consignors to many consignees, or, particularly, one consignor to many consignees. That the contention of the respondents for large differences in freight rates for quantity, deduced from alleged difference in cost of service, is one not regarded in the actual practice of the railroads, and therefore should not be accepted in argument when the tariffs are challenged. That the extreme limit of difference in freight rates for differing quantities is the net commercial profit. That a reduction if discriminating differences for quantities to the basis of net commercial profit would work no injustice to the jobbing interests of the interior cities.

The complainants therefore ask the Commission to order that car-load rates upon all articles of commerce complained of in these proceedings be discontinued by the respondents, or made so close to each other that they do not prevent shipments of the commercial package. That all rates upon any quantity of any of these articles be by the hundred-weight. That the respondents cease and desist from any species of discrimination whatsoever for quantities shipped of any of these articles so long as the same is contained in the commercial package; and from any discrimination whatever by car-load rates which depends upon the number of consignors or consignees. And that such rates and such classification in respect thereto be adopted as will in no degree oppress or discriminate against the smaller jobber in the smaller localities.

The complainants' argument in effect is that a lower rate for car-loads than for less than car-loads upon traffic for which, in existing conditions of commerce, a large demand exists in less than car-load quantities is unreasonable and unjust because it subjects small dealers dispersed throughout the country who may wish to purchase from seaboard or

distant jobbers to a disadvantage in choice of markets, and compels them to purchase from near jobbers, and that to enable seaboard jobbers to continue their business and compete with interior jobbers what is called the commercial package, and not a car-load, should be the unit of classification and rate.

On the part of the respondents it is claimed that cost of service is an important and acknowledged element in rate making, and the argument to sustain the present classification is based almost entirely upon the difference in cost of service shown by the evidence between car-loads usually hauled long distances to one consignee, and smaller quantities from different consignors to different consignees to be delivered at many stations.

Mr. Dey, one of the Railroad Commissioners of the State of Iowa, who appeared generally in behalf of the States west of the Mississippi river, made an elaborate argument against the contention of the complainants. Among other considerations he presented the following:

“The car-load rate in States west of the Mississippi has, ever since the advent of the railway, been the unit of measurement in all classes of goods and all manufactured articles, as well as in the products of the soil; in fact, in everything that is or can be dealt in largely enough to require the full capacity of a car. The law was not intended to interfere with the classifications of freight, or the reasonable difference between car-load and less than car-load rates; provided the same classification applies alike to all shippers, and that all shippers are on equal terms entitled to car-load rates in everything they desire to ship. The Western Classification, that took effect December 19, 1887, and was adopted by sixty-four different railway companies, representing 77,000 miles of railroad, contains 660 articles in the car-load classification in which the rates per hundred pounds are less than in small lots. This classification is but a continuation of that in use when railways were new, representing the growth of business, and varied from time to time as experience dictated; but the car-load has always been recognized as entitled to a lower rate than the less than car-load.

“The reasons for the car-load rate are: First, the cost of service is less; second, the risk to the carrier is less; third, the time the cars are in use is less; fourth, the unloading is usually done by the consignee.

“The reduction in the differences between car-loads and less than car-loads on the part of the lines west of Chicago, was not made on any principle announced by the railroad managers of these lines, but was in the nature of a compromise between the Chicago jobbers and the interior jobbers west of the Mississippi river, and all subsequent changes made in the Western Classification have been in the direction of restoring it to its old status. Neither Chicago nor New York is the initial or starting point of all freight shipments. The car-load rate is essentially a manufacturers' rate, and originated from the necessities of manufacturers. The articles showing the smallest percentage of difference between car-load and less than car-load rates compose ninety to ninety-five per cent. of the whole tonnage, while all the other articles combined compose the other five to ten per cent.

“Under the old system of making rates, the rates from manufacturing points to a few of the large distributing centres of the country were ridiculously low as compared with the rates to the smaller distributive centres, and the real ground of the complaining parties is that they are no longer able, as jobbers, to distribute traffic over territory which they were able to do under the old system of rates.

“Such articles as plows, wagons, general agricultural implements, starch, paper, axle grease, vinegar, soap, western packed canned goods, tubs, pails and washboards, corn, syrups and pickles, are manufactured not only at Chicago and New York, but at a number of points in the West widely scattered; and what right has the jobber of the former cities to complain if, by reason of the nearness of the manufacturers, the jobbers of the latter cities are enabled to obtain these manufactured goods at as cheap or cheaper freight than they? The articles of wooden ware, under which is comprised tubs, pails and washboards, plows and wagons, on which the largest percentage of difference between car-load and less than car-load rates exist, are first class in less than

car-loads, and fourth class and class A in car-loads. These articles can only be loaded into cars in anything like car weights by experts in loading and packing, at considerable pains and in extra-size cars. Fifteen to twenty thousand pounds may thus be loaded in a car. Of the same class of goods in the ordinary course of delivery, in broken and assorted lots at the freight station, not more than one-third of the above amount of weight can be loaded in a car by the ordinary warehouseman.

“In respect to the following items from the seaboard: Sugar, sugar syrups, raisins, rice, coffee, Baltimore packed canned goods, and salt fish, all of which, except raisins, show the smallest percentage of difference between car-load and less than car-load rates, the ground is taken that the difference in rates between car-loads and less than car-loads is not unjust or excessive. As an illustration, ten cars of miscellaneous freight billed from Chicago to Ottumwa, in September, 1885, contained on an average 7,920 pounds per car. Ten straight car-loads of groceries taken from the same month contained on an average 24,237 pounds per car.

“There is nothing in the claim that the small shipper or retailer is oppressed in the discrimination of rates. If the retailer is charged the full difference between less than car-load and car-load rates by the local jobber, then the New York jobber is not shut out of competition. If the difference in freight is allowed to the small buyer or retailer, he can not complain that he is oppressed.

“The fact that the less than car-load lots take nearly four times as many cars to carry the tonnage is not answered by the claim that cars go empty for the return produce, and the railway may as cheaply haul the partially loaded car as the empty car. For the year ending June 30, 1886, the tonnage crossing the Mississippi river into Iowa by rail was, east-bound, 4,216,878 tons; west-bound, 3,263,228 tons. The freight crossing the Missouri river by rail from and to the State of Iowa was, east-bound, 1,215,433 tons; west-bound, 1,426,292 tons. For the year ending June 30, 1887, the tonnage crossing the Mississippi river into Iowa was, east-bound 4,411,544 tons; west-bound, 3,601,566 tons. Missouri

river, east-bound, tons, 1,286,831; west-bound, tons, 2,015,147.

“The method of arranging freight tariffs is to follow the law that governs the cost of service, to decrease the rate per mile with distance. This decrease in long distances is very great. For example: Des Moines, a large jobbing centre, is 350 miles from Chicago. On a consignment from Des Moines to a point 40 miles west of Des Moines, in less than car-load lots of fourth-class goods, the rate is about the same as from Chicago for the same distance west of that city—about 12 cents per hundred pounds—while the difference from Chicago to Des Moines and from Chicago to the point 40 miles west of Des Moines, on the same shipment, is but two cents per hundred pounds. The whole merit of this controversy lies in the effort of the eastern jobbers to require their Des Moines competitors to pay the 10 cents per hundred more than they, to place the same goods in the hands of their customers 40 miles west of Des Moines.”

The questions involved in these cases, like most transportation questions, are complicated by conflicting interests on the part of persons engaged in trade and commerce, and of localities in different portions of the country. They can not be disposed of with sole reference to the interests of any one class of persons or one part of the country, but must be determined with due consideration of all interests, but more especially those of the general public, embracing, in their greatly preponderating number, the producers and consumers of the traffic, but without injustice to the transportation agencies. A general rule that shall be equitable to all is exceedingly desirable, but, in the conflict of interests, is difficult, if not impossible, to apply; and in the frequently changing conditions of commerce no rule of classification or rates can have an assurance of permanence or absolute equity. Classification is not yet an applied science founded on correct principles and governed by just and consistent rules. It is still in process of growth and development, and the best traffic experts, uninfluenced by exceptional conditions of roads or of special interests, are required to elabo-

rate a system that shall be simple and just, and fairly adapted to the wants of the country. The numerous classifications prior to the Act to regulate commerce were mostly irregular expedients, framed with little regard to principles of equity, and lacking greatly as they did in uniformity were confusing to the public. Some, for long distance transportation, had been constructed with more care and upon more reasonable principles regarding character of traffic and value of service.

The provisions of the Act to regulate commerce, operating directly upon the greater part of the commerce of the country, and, by necessary consequence, indirectly upon the whole internal commerce, rendered the multitudinous antecedent classifications impracticable, and made a new and improved general classification, or at least classifications suited to territorial areas substantially similar in conditions and traversed by the same traffic, necessary in order to establish rates over connecting roads in conformity to the requirements of the law. The Official Classification for the business of a very large territory and for a great number of roads thus came into existence. But, being hastily prepared, and in many respects a compromise of diverse and rival interests, especially on the part of roads, it inevitably had imperfections and inconsistencies. Some of these have been corrected by subsequent issues, and, except for the rigid methods of classification committees and the lack of lawful authority, more numerous and more rapid improvements would doubtless have been made. But, as all action in classification in the first instance, is voluntary on the part of carriers, both in recommending changes and their adoption by different roads, the difficulties in making material alterations are serious. Common consent is the only mode until complaint is made concerning rates.

The present contention has arisen out of this condition. The railroad managers made a classification of the varied and numerous articles of commerce, including those in controversy, which was a compromise between the roads in the eastern and western portions of the territory intended to be governed by the classification. The reasons that originally

controlled, whether rightly or wrongly, are still supposed by some of the constituent roads to be influential. And more thorough investigation of the subject has led all the roads, or at least the principal lines and the governing committees, to make a stand against the changes demanded. And in this they are earnestly supported, as shown by the argument of Mr. Dey, by the important interests west of the Mississippi river. The general question remains, therefore, in most respects in a similar condition to that in which it was first presented to the framers of the Official Classification.

In another case before the Commission the principles or considerations that mainly govern committees charged with the preparation of a classification were stated in evidence by a prominent official to be as follows:

“The competitive element, or the rates made necessary by competition; volume of the business, or tonnage; the direction in which the freight moves, whether that in which most of the freight is transported, or the reverse direction, in which the empty cars move; the value of the article to some extent; its bulk; its weight; and the risks attending transportation; the facilities required for particular or unusual transportation; the conditions attending transportation, embracing many things, such as the necessity for furnishing special equipment, as in the case of cars for dressed beef or cars specially adapted for freight of a perishable nature, large cars for freight of extraordinary bulk, &c.; also the analogy which the article classed bears to other articles in the classification; the conditions under which different railroad companies can afford to transport traffic have a large influence; the volume of a particular traffic upon a line of road, and the nature of the competition that it has to meet.”

It will be observed that these considerations have reference almost exclusively to the relation of carriers to the traffic, and that no prominence is given to any duty carriers owe to the public, or to any limitations upon the interests of carriers. The public character of carriers, and the public interests affected beneficially or injuriously by the conditions of the service rendered, require a just degree of consideration

for those interests, and in general it is believed they are not disregarded, though in some and perhaps many instances injustice may be done by too much concern for the carrier and too little for the public. As was said in the second annual report (page 9), the Commission has laid down the principle "that carriers in making rates cannot arrange them from an exclusive regard to their own interest, but that they must respect the interests of those who may have occasion to employ their services, and subordinate their own interests to the rules of relative equality and justice which the Act prescribes."


How to reconcile rival or competing interests and comply with the law by reasonable rates and impartial service, with just compensation for the work of the carrier, is a problem of no less difficulty than it has been heretofore. Every special interest is willing to have itself favored at the expense of others, but the purpose of the law is that burdens and benefits shall be equitably distributed, and average reasonable results can be reached in no other way, and are all that can justly be demanded.

The complainants insist that by the present classification unjust burdens are imposed upon miscellaneous shipments in small quantities as compared with car-load shipments, and they ask a return to the former method of no distinction in rates between car-loads and less than car-loads and still in use by the roads in the Southern Railway and Steamship Association. They urge that a discrimination in charges between car-loads and less than car-loads is unjust and in violation of the first four sections of the Act to regulate commerce. This contention leaves out of view the dissimilar circumstances and conditions of the two methods of shipment and the material element of greater cost to the carrier in the one case than the other. The supposed illegality of a discrimination in charges for car-loads and less quantities with varying destinations cannot be maintained under any of the provisions of the Act. The law itself must have a reasonable interpretation, and its provisions are ample to warrant differences in rates founded upon the character of the traffic and the dissimilar conditions of shipment and carriage. The

first section requires all rates to be reasonable, and this necessarily means under the circumstances of the traffic and transportation. The second, third and fourth sections no more require an equal rate for different kinds of traffic and different modes of transportation than they require the same charge between stations, however near or however remote. The elements of distance, of difference in character of traffic, and of dissimilar transportation conditions as grounds for distinction in rates are as clearly recognized as the right of a carrier to compensation for its services. Some discrimination for adequate cause is therefore lawful. The discrimination must not be unjust nor the advantage undue, and the respective rates must not be relatively unreasonable. It is the extent of the discrimination that may be unreasonable and unjust, and not always the mere fact of a difference.

The compulsory restoration of equal rates for car-loads and less than car-loads in respect of goods properly so classified because naturally and legitimately carried in both modes to meet the demands of commerce, is altogether impracticable, and would seriously demoralize classification and business. It would be a retrograde movement, detrimental in many respects to the public interests. A lower less than car-load rate might follow in some instances, but the car-load rate would necessarily advance in most cases to make an average remunerative rate, and the interior jobber would lose his vocation unless the cost to the consumer were generally increased. It is a sound rule for carriers to adapt their classifications to the laws of trade. If an article moves in sufficient volume, and the demands of commerce will be better served, it is reasonable to give it a car-load classification and rate. The car-load is probably the only practicable unit of quantity. And the fact of an antecedent condition when no such distinction existed, and perhaps was not required, furnishes no argument for a return to a mode no longer suited to the requirements of business.

The important question in these cases is therefore whether the classifications of the articles under consideration mark too wide a difference in rates with reference to quantity carried. The complainants concede that difference in cost of



service is a proper element to be taken into account, but deny that this difference is equal to the disparity in rates. The complainants insist that the difference in rates for car-loads and less quantities should be measured by the commercial profit on the goods of the jobber who ships in small quantities or commercial packages to retailers throughout the country. And it was urged that a retailer who buys directly from a seaboard jobber or manufacturer instead of an interior jobber, saves an intermediate profit which may inure to the benefit of the consumer.

The theory of an adjustment of rates to preserve a commercial profit to manufacturers and jobbers in all cases, if accepted as a necessary rule under the law, and generally applied, would be far reaching in its consequences, and clothe common carriers with a new function, to equalize at their own expense the net results of business operations, without regard to location or the conditions of handling and carriage. In many instances the work of the carrier would have to be done at less than cost, and in some for nothing. Such a rule is not admissible, therefore, as one of general application, and is not essential to the case of the complainants.

And the question at issue is not restricted to jobbers and manufacturers in any one locality or district of country. These are dispersed widely, and traffic is drawn from various quarters and all sources of supply. As classifications and rates must be general an injurious effect in some cases and to some interests is unavoidable, but so long as in the main they are satisfactory the rule applies that the good of the greater number is paramount.

The differences in classification of car-loads of one kind of freight to one destination, and less quantities of different kinds to various destinations, are based on the well-known fact of a difference in the cost of service by the carrier. This fact, and the extent of the difference, were probably never so fully demonstrated by tests on different roads, and at different points, as in these cases. Exact average differences, or the difference upon any particular kind of traffic, have not been shown, and perhaps are not possible, but approximately the difference in cost of transportation as shown by testi-

mony ranges from 47 per cent. to 100 per cent., exclusive of handling, loading and delivering, less than car-load freights and transfers en route, and the average difference in earnings per car from an average load of car-load freight and an average load of less than car-load freight is not far from 100 per cent. These averages are varied in both directions by differing conditions and volume of business at different points, but the facts show in a general way substantial grounds for a difference in classification.

In the German classification, of which evidence was given, freight is classified in two principal classes, car-loads and less than car-loads. Different rates are charged on goods of different values shipped in car-loads of 20,000 pounds, of which there are three general classes, and a lower charge is made on goods of the third class carried over 60 miles. There are also special car-load rates for goods not belonging in the first, second and third car-load classes for quantities of 10,000 pounds, and a rate three mills lower per ton per mile for quantities of 20,000 pounds. Articles embraced in the first three car-load classes, when carried in quantities of 10,000 pounds, are charged a higher rate per ton per mile, the differences being 2 mills for the first class, 6 mills for the second class and 1 cent for the third. In the less than car-load class all goods are comprised without distinction as to value (except that bulky articles have an extra charge), and for this class the highest rate per ton per mile is charged, being 4.5 cents. The difference between the highest rate of car-load freight and the rate on all articles of less than car-load freight is 2 cents per ton per mile, or 80 per cent., and the lowest car-load class is one-fifth of the rate for less than car-loads.

The rates under the German classification are very much higher than under the official classification in question. For example, on an assumed basis of 1,000 miles, the highest German rate (less than car-loads) is 4.5 cents per ton per mile, or \$2.25 per hundred pounds. The highest official classification rate (some articles, however, taking higher percentages of that rate) is 1.5 cents per ton per mile, or 75 cents per hundred pounds. The lowest German car-load

rate is 1.9 cents per ton per mile, or 95 cents per hundred pounds, and the lowest official classification rate is 0.5 cents per ton per mile, or 25 cents per hundred pounds. The average earnings on all classes under the official classification, for a period of eight months in 1887, were 41.5 cents per hundred pounds on west-bound traffic, and 30 cents on east-bound traffic.

The actual class rates, in cents per hundred pounds and per ton per mile, in effect in 1889 under the three classifications in the United States, are as follows:

Official Classification.—New York to Chicago, 912 Miles.

Class.	1	2	3	4	5	6
Class rate.....	75	65	50	35	30	25
Per ton per mile.....	1.64	1.43	1.10	.77	.66	.55

Western Classification.—Chicago to Omaha, 490 Miles.

Class.	1	2	3	4	5	A	B	C	D	E
Class rate.....	75	60	40	30	25	30	25	20	17½	16
Per ton per mile..	3.06	2.45	1.63	1.22	1.02	1.22	1.02	.82	.71	.65

Southern Railway and Steamship Classification.—Louisville to Selma, 490 Miles.

Class	1	2	3	4	5	6	A	B	C	D	E*
Class rate.....	98	92	78	63	52	41	28	31	28	24	48
Perton per mile	4.00	3.78	3.18	2.57	2.12	1.67	1.14	1.27	1.14	.98	1.96

The classes with the rates per hundred pounds and per ton-mile, some of which are special and not class rates, on a few of the leading grocery articles, under the three classifications, are shown by the following comparative table:

* There are two other classes, H & F, which are special, for particular articles not in question in these cases.

ARTICLES.	Official Classification. New York to Chi- cago, 912 miles.			Western Clas- sification. Chic'go to Oma- ha, 490 miles.			So. Ry. SS. Assoc. Classification. Louisville to Sel- ma, Ala. 490 miles.		
	Class.	Rate per 100 lbs.	Rate per ton per mile in cents and Fractions.	Class.	Rate per 100 lbs.	Rate per ton per mile in cents and fractions.	Class.	Rate per 100 lbs.	Rate per ton per mile in cents and fractions.
Cider in wood.....L. C. L.	3	50	1.10	4	30	1.22	6	41	1.67
" " C. L.	5	30	.66	5	25	1.02	6	41	1.67
Sugar in bbls.....L. C. L.	4	35	.77	spl.	28½	1.16	6	41	1.67
" " C. L.	6	25	.55	5	25	1.02	6	41	1.67
Prunes, bbls. or casks....L. C. L.	3	50	1.10	4	30	1.22	3	78	3.18
" " C. L.	4	35	.77	4	30	1.22	3	78	3.18
Fish, salted, pickl'd.....L. C. L.	5	30	.66	spl.	28½	1.16	5	52	2.12
" " C. L.	6	25	.55	5	25	1.02	5	52	2.12
Canned goods, N. O. S.....L. C. L.	2	65	1.43	spl.	28½	1.16	4	63	2.57
" " C. L.	5	30	.66	5	25	1.02	5	52	2.12
Salt in bbls.....L. C. L.	5	30	.66	4	30	1.22			
" sacks.....L. C. L.	4	35	.77	4	30	1.22	6	41	1.67
" " C. L.	6	25	.55	spl.	15	.61	spl.	17	.69
Molasses in bbls.....L. C. L.	4	35	.77	spl.	28½	1.16	6	41	1.67
" " C. L.	5	30	.66	5	25	1.02	6	41	1.67

These are perhaps sufficient for illustration. The rates, as is seen, are much higher in both the Western and Southern Classifications than in the Official. And in the Southern the rate for car-loads and less than car-loads, when uniform, is higher than the less than car-load rate in the Official. Salt has a low special classification in both the Western and Southern. In the Western Classification when a difference is made between car-loads and less than car-loads the difference is usually one class, or five cents per hundred pounds, but some of the less than car-load rates are special, with a difference of three and a half cents per hundred pounds. In the Official on some articles the differences are much greater, for example on cider in wood 20 cents, sugar 10 cents, prunes in barrels or casks 15 cents, standard canned goods 35 cents and salt in sacks 10 cents.

These differences, which might be further illustrated, present the exact question in controversy. The complainants say they are substantially prohibitory upon less than car-load shipments, and are not warranted by difference in cost of service, or any principles that should govern rate-making.

The cost of service, while recognized as an important ele-

ment in classification and rates, is not alone controlling. On that basis some articles, on account of relation of commercial value to cost of service, though furnishing a large volume of traffic, would not be carried at all, and others of high commercial value would have a very low rate without increasing tonnage.

Another element of the highest importance, and that can not be disregarded, is the value of the service to the article carried. This is a factor that largely determines the classification and rates the article will bear in the transactions of commerce and necessarily qualifies the influence of other factors in the distribution of charges with the view to average reasonable revenue.

Though rates under the Official Classification are for the most part lower on like traffic, the rates in the Western Classification show less differences between the classes, and the use of special rates makes less discrepancy even than class differences between car-loads and less than car-loads.

The reasonableness of the rates in question, independently of their relations to each other, is not complained of, but they are challenged on the ground of relative unreasonableness as applied to quantity. The other classifications, say the complainants, make either no discrimination between car-loads and minor quantities, or so much less discrimination that the smaller shipper is not unduly prejudiced. At the rates charged, they aver, the service in respect of less than car-loads is disproportionately remunerative to the carrier, but substantially valueless to the shipper, because the competition of the car-load shipments of the same kind of traffic leaves no margin of commercial profit on the goods, and therefore the transportation is not worth the charges imposed for the service. They also say that large differences in rates for quantity is a rule not uniformly adhered to in the actual practice of carriers, and therefore should not be recognized as a general rule, nor applied to the articles in question, which are mostly household goods of universal use and everywhere handled in the retail trade. Reference is made to a large number of articles, forming a considerable part of the traffic carried by railroads, for which no separate car-

load rates are made, such as dry goods, cotton piece goods, boots and shoes, tobacco, clothing, candy, caps and hats, blankets, hardware, wool, eggs, tea, &c.

The testimony tends strongly to support these contentions of the complainants, and they have not been met by any evidence other than the average difference in cost of service for car-load and less than car-load traffic and average revenue therefrom. These averages are deduced from the carriage of every variety of goods, and embrace the freight that has no car-load classification. A general average is not an absolute criterion for a particular class of traffic that supplies a large tonnage, carried under favorable transportation conditions.

Moreover, evidence intended to show relative cost of service and relative earnings from traffic differently handled, is not always as fully trustworthy as might be desired. Analysis of such evidence often discloses factors that are given undue weight, or discovers that other material factors may be omitted. So much depends upon the use of strictly legitimate items, and the manner in which figures are handled in reaching results, that caution is generally necessary in accepting arithmetical conclusions. All such evidence is to be considered, therefore, with some degree of reservation as to its weight.

The claim made by complainants that shipments of the grocery articles in question are chiefly made in less than car-loads, has not been controverted. The evidence shows that one of the complainant firms shipped annually over the respondent lines about 20,000 tons of freight, of which only about 120 tons, or three-fifths of one per cent. was in car-loads, and that another firm shipped over the same lines about 25,000 tons, of which about one-eighth of one per cent. or 31 tons, was in car-load quantities to one consignee.

One of the witnesses for the respondents, and of the highest authority on transportation subjects, conceded that there are features of hardship in the present classification, as, for example, where one consignor forwards to one consignee 20,000 pounds of miscellaneous freight in one shipment, and is charged the less than car-load rate, although the shipment amounts to a full car-load. This manifest

anomaly was imputed to the fact that in the present classification the line had been drawn at car-load shipments of 20,000 pounds or 24,000 pounds of one class of goods from one consignor to one consignee. And the witness gave it as his judgment, that when a car is loaded to its full capacity with miscellaneous freight, it would seem fair to make a reduction in rates, and that this rule should apply to any number of shippers who might make up a full car-load. The feature of the German Classification allowing a reduced rate for shipments of miscellaneous freight in quantities of 10,000 pounds, but not as low as for full car-loads of 20,000 pounds, he thought, if adopted, would remedy to some extent the complaints against the present classification, which limits the minimum car-load weight to 20,000 or 24,000 pounds. These cautious utterances are significant upon the questions at issue. Other able and experienced traffic managers, not called as witnesses, deprecate the differences in rates based on quantity, and favor a uniform rate regardless of quantity. The differences in the other classifications referred to are also suggestive. There is division of opinion, therefore, among experts in transportation, with reference to the justice and propriety of the present classification.

The Providence Coal Case (1 I. C. C. Rep. 107) involved a principle similar to the one in this case, and considerations were urged by the defendant not essentially different from the contention of these respondents. That case was not an issue between car-loads and less quantities, but between total annual consignments to one dealer, at any one station on the line of road, of 30,000 tons or upwards, and consignments of less amounts, a lower rate of ten per cent., equal to ten cents per ton in that case, being allowed to the consignee of the specified quantity. It was said by the Commission (pp. 117, 118):

“A discrimination such as the offer and its acceptance by one or more dealers would create, must have necessary tendency to destroy the business of small dealers. Under the evidence in the case it appears almost certain that this destruction must result; the margin for profit on wholesale

dealings in coal being very small. The discrimination is, therefore, necessarily unjust, within the meaning of the law. It can not be supported by the circumstance that the offer is open to all; for, though made to all, it is not possible that all should accept. Moreover, in testing such a discrimination we must consider the principle by which it must be supported; and the principle which would support a 30,000-ton limitation would support one of 50,000 or 100,000 equally well; the quantity named would be arbitrary in any case. It might easily be made so high as practically to be open to the largest dealer only. A railroad company, if allowed to do so might in this way hand over the whole trade on its road in some necessary article of commerce to a single dealer, for it might at will make the discount equal to or greater than the ordinary profit in the trade; and competition by those who could not get the discount would obviously be then out of the question. So extreme a case would not, however, be needful to show the inadmissibility of such a discount as is here offered; the injustice would be equally manifest if several dealers instead of one were able to accept the offer. A railroad company has no right, by any discrimination not grounded in reason, to put any single dealer—whether a large dealer or a small dealer—to any such destructive disadvantage."

Upon all the evidence, and upon principles that should govern rate making, a *prima facie* case has been made against the present classification, which has not been justified by the respondents. Rates should be adjusted to correspond, within reasonable limits, to the existing business of the country in which the public generally is interested. It is not the province of carriers to regulate business, or to build up or destroy markets, but it is their duty to serve business interests equitably and impartially. The evidence shows that the public is far more largely interested in miscellaneous shipments than in solid car-load shipments of one kind of traffic. While this condition exists the carriers have a duty to perform to make their service equitable and as reasonable as just compensation for their work

will permit. All rates must be reasonable and just. Differences ranging from 40 per cent. to upwards of 100 per cent. upon the same goods to the same destination, in substantially like quantities as well as in less, in the same kind of cars, and perhaps hauled in the same train, are manifestly neither reasonable nor just, and work undue prejudice and disadvantage to shippers and consignees of miscellaneous freight, both in full car-loads and in smaller quantities. The circumstance of many consignors to many consignees of a full car-load to the same destination is too unimportant in the item of cost of handling to demand a difference in the rate. Fractional differences exist in all business, as they do under all laws imposing burdens, and in business are supposed to be equalized by average charges. For illustration, in the passenger service quantity is not considered, and passengers weighing three times as much, and with the full limit of baggage, are charged the same rate for the same journey as the lighter passengers without baggage; and a few passengers in a car pay no higher rate than the passengers in a full car, though the earnings of the two cars and the cost of service per passenger differ widely.

In the case of smaller shipments to many consignees at many destinations, there is such material difference in the cost of service, in the earnings of cars, and in car detention, as to justify a higher charge. A reasonable amount of difference is difficult to adjust, but it should not be prohibitory upon the business, nor unjustly disproportionate.

The difficulties that have led to these complaints doubtless arise in most part from the small number of classes in the Official Classification, and the effort to compress a vast number of articles of commerce in so few classes. If special rates were made, as in the Western Classification, and a lower intermediate car-load classification established, as in Germany, at a corresponding rate, many of the hardships of the present classification might perhaps be satisfactorily remedied. A classification is not a fixed condition to which other interests must necessarily yield. It is the creation of carriers for their own and the public convenience, and may be changed by its creators. If not compatible with the public

interests it should be modified to subserve those interests. Changes ought to be made, but changes under an order of the Commission may not be final. In the nature of things they must in a measure be experimental. And corrections, however made, may require further revision. In the contemplation of the statute, classifications are to be made and rates established by the carriers subject to review by the Commission and such orders in the premises as justice may require under the provisions of the Act.

In these cases the Commission finds that no adequate reason has been shown for a difference in rates for a car-load quantity of like traffic to the same destination, whether from one consignor to one consignee or from several consignors to several consignees, and the discrepancy between the rates for car-loads and less than car-loads upon the grocery articles in question is unreasonable when both go to one destination, and seems in a lesser degree to be unreasonable when less than car-loads go to different destinations. Under these findings the respondents are required to revise their classification and rates, and reduce the unreasonable differences to a basis more in conformity to the statute.

The Commission orders that the respondents proceed forthwith to make the corrections indicated, and that they complete and put the same in effect within thirty days from the service of this order with a copy of the report and opinion.

GEORGE D. SIDMAN *v.* THE RICHMOND & DANVILLE RAILROAD COMPANY.

Complaint filed August 5, 1889. Answer filed August 21, 1889. Answer withdrawn November 4, 1889. Amended complaint filed November 8, 1889. Answer filed November 26, 1889. Heard and submitted February 10, 1890. Decided April 5, 1890.

The respondent issued commutation tickets for a stated number of trips within a specified time, subject to several conditions, one of which was that the purchaser should have no claim for rebate on account of non-use of the ticket from any cause; another that it be presented to the conductor for cancellation of each trip when taken. A commuter had to pay the conductor full fare if he did not have his ticket, but in such cases the respondent had fallen into the habit of refunding the same on presentation of the ticket for cancellation of the trip at the proper office of the company. About three weeks prior to the complainant's purchase of his ticket, the respondent had discontinued this habit and had given notice to that effect in a new tariff sheet filed with the Interstate Commerce Commission and posted in the stations of the railroad as required by law on a change of tariff rates.

Held, that it was not an unlawful discrimination to refuse to refund to the complainant who held such ticket, but had forgotten to take it on a certain trip and had paid his fare, notwithstanding he supposed the former custom was in vogue when he purchased his ticket.

It was a regulation of the respondent company, published on its public tariff schedules filed and posted as required by the Act to regulate commerce, that the conductor should collect fare on trains from passengers without tickets by adding 25 cents to single trip rates. *Held*, that it was not unjust discrimination against the complainant to exact this addition from him.

The complainant purchased what the respondent termed a quarterly commutation ticket on the 13th day of June, specifying the number of trips that might be taken thereon as 180, but it provided that the term should expire on the 31st day of the following August, and this was known to the complainant when he made the purchase. It was similarly stated on each one of such quarterly tickets when it was to expire, viz.: at the end of the third calendar month after it was issued. *Held*, that the complainant was not entitled to recover any portion of the purchase price for the thirteen days less than a full quarter.

George D. Sidman, for complainant.

James T. Worthington, for defendant.

REPORT AND OPINION OF THE COMMISSION.

VEAZEY, *Commissioner* :

The complainant charged in substance that he is a clerk in a Government Department at Washington and a resident of Herndon, Virginia; that the defendant is a common carrier and subject to the Act to regulate commerce; that the complainant held a commutation ticket on the Washington, Ohio & Western Division of defendant's railroad, dated June 13, 1889, and good for 180 rides between Herndon, Virginia, and Washington, D. C., during the three months ending August 31, 1889; that on the morning of July 10, 1889, he boarded the defendant's train at Herndon, Virginia, *en route* to Washington, having inadvertently left his said ticket at home, and was compelled to pay the regular cash fare, 80 cents, between Herndon and Washington, and in addition thereto 25 cents, called train rates, being in the nature of a penalty for not having procured a regular ticket before starting; that the same sum was also paid in the absence of his ticket on his return to Herndon in the evening of the same day; that he received the conductor's receipts for said payments; that on the next day he called at the defendant's general office in Washington and presented the said receipts and demanded of the defendant's agent a refund of \$2.10 thus collected from him by the conductor on the day previous, at the same time offering his commutation ticket for cancellation of the two rides; that the said agent refused to make the refund and explained why he so refused; that the complainant had been informed that the defendant had previously refunded fares to various persons under like circumstances, and charging that the refusal to refund to him was a violation of the Act to regulate commerce, in that it was a discrimination in rates between patrons of the defendant company, and praying that the defendant may be required to make restitution of the \$2.10.

The respondent company answered the several charges in

the petition specifically and denied any violation of the Act to regulate commerce. It is not deemed necessary to further set forth the answer.

The facts established by the evidence are as follows:

The respondent company has for a long time issued a quarterly commutation ticket which provided that the person whose name was inserted therein was entitled to a specified number of trips, formerly 162, now 180, between Washington and the station on its line of road named in the ticket, "during the three months ending on date cancelled in the margin subject to the contract named on back hereof, which must be signed by purchaser before ticket is valid for passage."

On the ticket was a printed contract in part as follows:

"In consideration of the reduced rate at which this ticket is sold I agree that its use shall be subject to the following conditions:"

* * * * *

"2d. That it is good for passage only during the period designated on its face."

* * * * *

"5th. That I have no claim for rebate on account of the non-use of the ticket from any cause."

"6th. It is to be presented to the conductor each trip, who will cancel one of the marginal numbers, and is to be surrendered on the last trip taken during the period for which it is issued."

"7th. That the privilege of subsequent commutation will be forfeited by any violation of these conditions."

Then follows the signature of the purchaser.

The conditions here omitted do not bear on the points in this case.

The respondent always, when it sold one of these tickets, provided for its termination on the last day of the third calendar month following its sale by a clause thereon in these

words, "During the three months ending on date cancelled in the margin" and by punching that date on the margin, so that, although it was denominated a quarterly ticket, it would expire on the last day of the third month after it was purchased, notwithstanding its purchase was subsequent to the first day of the month, thereby shortening the term of the ticket to less than three months if purchased subsequently to the first day of the month, but not lessening the number of trips specified. To illustrate: If the ticket was purchased on the 10th of a month it would expire in ten days less than three months, but the number of trips named on the ticket might be taken within its life.

Prior to May 25th, 1889, the respondent company had been in the habit, as a favor to such ticket passengers, but not by obligation, of waiving the 5th and 6th conditions of the contract above stated in cases where a passenger by inadvertence did not have his commutation ticket with him on boarding a train, and of refunding to him the amount of fare which he had paid to the conductor, on presentation to the company's office of the conductor's receipt for the same and of the ticket for cancellation of the trip. But prior to said 25th of May, 1889, for the reason largely that this privilege to this class of passengers had become the subject of abuse and trouble to the respondent company, it decided to discontinue said habit. It accordingly issued a new passenger tariff of first-class passenger rates for single trip, round trip, school and commutation tickets, to take effect May 25th, 1889, between Washington and stations named thereon, and giving the number of miles to each station and the price and the rates for each kind of ticket. Then after giving instructions as to each kind of ticket specified there followed this notice: "Tickets sold at the above rates are good on any train making regular stop at destination, to be presented to the conductor each trip for proper cancellation, and admit of no stop-over privilege. No refund or rebate will be made for failure to observe the conditions under which they are issued. Conductors will collect fare on trains from passengers without tickets by adding 25 cents to single trip rates."

This tariff notice was plainly printed and filed with the

Interstate Commerce Commission and posted in the stations of the Washington & Ohio Division of the respondent company, seasonably before the said 25th of May, pursuant to the requirements of the Act to regulate commerce. From that date said company adhered to the above notice and the condition of the contract on the commutation tickets, and discontinued the former practice of refunding to commuters who failed to have and present their tickets to conductors for cancellation of the trip. On the 13th day of June, 1889, the complainant purchased one of said quarterly commutation tickets between Washington, D. C., and Herndon, Virginia, specifying that he was entitled to 180 trips between said stations, during the three months ending August 31, 1889, subject to the contract thereon, which was signed by the complainant. On the 10th day of July following he boarded a train at Herndon for Washington, and, having forgotten to take his said ticket with him, was compelled by the conductor to pay the single-trip rate and twenty-five cents in addition, and took the conductor's receipt for the same. This was repeated on his return the same day from Washington. He did not know, when he purchased said commutation ticket, of the said change of custom in respect to refunding to commuters who failed to have their ticket on the train, but supposed the former custom was still in vogue. Neither had he observed said new tariff sheet and notices thereon in the stations, and did not know of the same. He did not, however, leave his ticket behind at Herndon in reliance on the continuance of the former practice of refunding, but because he forgot to take it.

The next day after these payments he applied to the proper office of the respondent at Washington for repayment of the money, presenting the conductor's receipts and his ticket for cancellation of the trips, but his application was refused. Thereupon he brought this petition.

The facts developed on the hearing make it probable that the complainant has brought his proceeding under a misapprehension as to the rule of the railroad company in force when he bought the ticket and at the time of his journey. This case rests on the theory that a practice once followed is

of continuing obligation, and that because the respondent at a former period refunded to holders of commutation tickets the fares paid under circumstances similar to those in his case, it was unlawful discrimination to refuse re-payment to him.

There might be force in such claim if the custom had not been discontinued before he bought his ticket. The question before this tribunal is whether the complainant has been the victim of unlawful discrimination. The evidence establishes that he has been treated precisely like all other commuters in respect to refunding since the last passenger tariff was issued and posted. Public notice was then given, as fully as is required in case of a change of rates, that there would thereafter be no refunding on failure to observe the conditions under which all tickets are issued. This was, in effect, notice of discontinuance of the former practice, and it was in fact discontinued, there having been no refunding since. Under the proof, which was undisputed on this point, the complainant clearly has no foundation for his claim of discrimination.

The complainant further contended that, having purchased his ticket on June 13, it should have continued in force three months and until September 13, and having been deprived of the twelve days in September, he is entitled to be repaid \$3.24, the proportionate rate for that period, the price of the ticket having been \$24.80.

This was not claimed in the petition, but it could be amended in that regard.

The answer to this claim is that the complainant knew just what he was buying at the time he purchased the ticket. It was plainly expressed on the ticket and was then noticed by him, and made the subject of inquiry and explanation. So that he bought the ticket understandingly and without fraud on the part of any one.

The complainant makes the further contention that the exaction of twenty-five cents on each of said two trips in addition to single-trip rates was in violation of the Act to regulate commerce, inasmuch as this rule of the company is

a discrimination between passengers who purchase tickets before boarding trains and those who do not; especially in view of the fact that it is a regulation of the company that ticket offices on the line of the road shall be closed two minutes before the arrival of trains.

When the matter is not regulated by statute it seems to be generally held that it is a reasonable requirement that passengers who neglect to purchase tickets at stations before embarking on cars, shall be charged additional fare, if proper conveniences and facilities are furnished them for procuring tickets.

Railroad Co. v. Parks, 18 Ill. 460;
Stephen v. Smith, 29 Vt. 160;
State v. Gould, 53 Maine 279;
Railroad Co. v. Skillman, 39 Ohio St. 444;
Crocker v. Railroad Co., 24 Conn. 249;
2 Wood Railway Law, 1402;
2 Beach, § 877.

No question was made that the amount was too much if anything extra was allowable.

It would seem to follow from this generally recognized doctrine that it is not unjust discrimination to exact some additional train fare under the circumstances existing in this case. In some of the above cases and in others not cited it is held that it is immaterial whether the rule was previously known to the passenger or not. There is no evidence to show that there were not proper conveniences and facilities for the sale of tickets, both at Herndon and Washington, on the said 10th day of July before the starting of the trains on which the complainant paid the extra train rates. But, however that may have been, it did not affect the complainant, as he did not intend or want to buy a ticket, as he relied on using his commutation ticket.

No unlawful discrimination being established the petition is dismissed.

At the hearing and decision of this case the Chairman was absent because of illness, and did not in any way participate.

**D. S. ALFORD v. THE CHICAGO, ROCK ISLAND &
PACIFIC RAILWAY COMPANY.**

Complaint filed August 9, 1889. Answer filed August 28, 1889. Heard at Kansas City, Mo., September 24, 1889. Brief for complainant filed December 12, 1889. Decided April 9, 1890.

In the absence of statutory provision the rights of a railroad company under a lawful agreement for a specified use of the tracks of another railroad company are measured in respect to the track use by the terms of the contract, and the provisions of the Act to regulate commerce apply to the situation created by the contract and add no authority for a different use of the tracks.

The duty of a railroad company operating its own road or a road that it controls to serve the local stations on its line does not apply to a company that has only a running privilege for through trains to reach points on its own line over a part of the road of another company which it does not control. In such a case the company is not required to disregard the conditions of its agreement, and does not violate the provisions of the Act to regulate commerce by not receiving and discharging traffic on the tracks of the proprietary company, the sufficiency of the local service rendered by the latter not being questioned.

The Union Pacific Railway Company entered into a contract with the Rock Island Railway Company by which for a valuable consideration the latter company acquired the right to run its through trains from and to points on its own road over the road of the Union Pacific Company between Kansas City and Topeka upon the condition that no intermediate business should be done by the Rock Island Company on any part of the line used under the agreement, the Union Pacific Company retaining control of the road and of its operation, and supplying transportation accommodations for the intermediate points between Kansas City and Topeka. Upon complaint made against the Rock Island Company by a resident of Lawrence, one of the intermediate towns, for refusing to perform the ordinary duties of a common carrier in receiving and discharging traffic at his town ;

Held, that the duties of the Rock Island Company were limited by its rights and powers under its contract and that it was not bound to do the local business prohibited by the agreement on the line used by its through trains.

Samuel A. Riggs and *D. S. Alford*, for complainant.

M. A. Low, for defendant.

A. L. Williams, for Union Pacific Railway Co.

REPORT AND OPINION OF THE COMMISSION.

COOLEY, *Chairman* :

The complaint in this case avers that complainant is a citizen of the State of Kansas, and a resident of the city of Lawrence in that State, which city has a population of about 12,000, and is an important business point in said State. That the Chicago, Rock Island & Pacific Railway Company operates, among other lines of railway, a line of road extending from Kansas City, in the State of Missouri, through said city of Lawrence, to the city of Colorado Springs in the State of Colorado; and that said railroad company wholly refuses to afford any railway facilities whatever to the inhabitants of said city of Lawrence, or to stop any of its trains at said city for the accommodation of its people; and unreasonably subjects said locality to great disadvantage thereby; and does and has wholly refused to transport the complainant from said Kansas City to said city of Lawrence, or to sell tickets to complainant for transportation on its said road between said points; the said company alleging as its excuse therefor that it operates its trains between said Kansas City and through said city of Lawrence, over the railway track of the Union Pacific Railway, and under a contract with the Union Pacific Railway Company that said Chicago, Rock Island & Pacific Railway Company shall do no business at said station of Lawrence, and accept of no business to or from said city of Lawrence to or from any other point; which contract, if any such exists, the complainant alleges was made after the Act to regulate commerce went into effect, and is in conflict with the terms of said Act, and particularly with that portion of section 1 thereof, which provides that "the term *railroad*, as used in this Act, shall include . . . all the road in use by any corporation operating a railroad, whether owned or operated under a contract, agreement or lease," etc.; and also of section 3 of said Act.

Complainant therefore prays that said railway company may be ordered and required to afford all reasonable and proper facilities for railroad traffic over said line, to the said city of Lawrence and its inhabitants; and that said company be also ordered and required to transfer complainant over said line to or from said city of Lawrence to or from points outside of said State of Kansas, upon his hereafter tendering to the proper agents of said company proper and usual compensation therefor.

The answer of the respondent admits that complainant is a citizen of Lawrence as alleged, and that said city is situate on the Union Pacific Railway, in the State of Kansas, and on the portion of that railway over which respondent operates trains; admits the importance of the city; and that respondent operates trains from Kansas City in the State of Missouri, by way of said city of Lawrence, to the city of Colorado Springs as alleged; that it has wholly refused to furnish any railway facilities whatever to the inhabitants of said city of Lawrence, and has refused to stop its trains at said city for the accommodation of the people thereof; that it has refused to transport the complainant from said city of Lawrence to said Kansas City, or to sell to him or to any other person tickets for such transportation. It denies that the several acts alleged and so admitted are illegal or unreasonable. It alleges that it owns no railway which extends to or through said city of Lawrence; that it has acquired by contract the right to operate freight and passenger trains along and on the tracks of the Union Pacific Railway Company, from Topeka in the State of Kansas to Kansas City in the State of Missouri, subject to certain conditions and stipulations in the contract set out and expressed; and that among the covenants and agreements therein contained is one on the part of the respondent that it will not carry freight or passengers on such trains to or from any stations between Topeka and Kansas City. That this respondent has kept and performed said covenant, and has never become a common carrier to or from said city of Lawrence; and that a wilful violation of its covenant would result in a forfeiture of its rights under said contract of lease, and deprive it of the

power to operate any trains over said Union Pacific Railway between the points named or any other points.

For these reasons respondent prays that the complaint be dismissed.

Upon the issue thus made, the parties proceeded to a hearing and the complainant introduced evidence tending to show the importance of the city of Lawrence as a business point, and that it is a point of junction between the Wyandotte & Northwestern branch of the Atchison road and of the Southern Kansas branch of the Atchison road, with the Union Pacific Railway; also that at this point there is a junction between the main line of the Union Pacific road and its Leavenworth branch; also that the United States Express Company operates over the lines of the respondent, in the State of Kansas, and that that express company has no office in the city of Lawrence, though it is the only express company operating over the respondent's lines. It was admitted in the case that the agreement set up in the answer was made by the Union Pacific Company with the Chicago, Kansas & Nebraska Railroad Company, and that the respondent is the assignee of the last-named company of all its rights thereunder. It was further shown on the part of the respondent, as a reason for the making of this contract, that the Chicago, Rock Island & Pacific Railway, and other corporations which were created in its interest, had at the time a line of road from Kansas City, in the State of Missouri to St. Joseph, also in the State of Missouri, and were engaged in extending their lines west. In order to reach their western termini from Kansas City they would have to run to St. Joseph, then over their line to the points desired, making a very roundabout route; and it was manifestly a convenience for them to shorten that line if they could do so. This contract was made for that purpose, giving them the right to run their trains over the Union Pacific between Kansas City and Topeka. It was merely a trackage arrangement, constituting in no sense a lease of the line of the Union Pacific. That company continued to operate its own lines as before. The Chicago, Kansas & Nebraska Rail-

road did not extend to Kansas City and did not reach Lawrence. It was not incorporated to reach Lawrence. It was therefore merely to shorten their line that the respondent road desired to use the track of the Union Pacific from Kansas City to Topeka, and to save the expense of building parallel tracks between these points. It was not the purpose of the contract to divest the Union Pacific Railway Company of its rights, or duties, or privileges, in any respect whatsoever, but merely to enable the respondent to run its trains from points upon its own track to its own grounds in Topeka, taking no business at intermediate points. And it was claimed that if a contract of that kind and thus limited could not be made, then the cause of the complainant is at an end, because the respondent doing business at Kansas City and having neither a railroad nor franchises, nor business facilities, at Lawrence, could not be compelled to do business there.

The agreement, dated the 17th day of March, 1887, was put in evidence, and the material parts thereof are in substance as follows:

It recites that the party of the first part, the Union Pacific Railway, now owns and operates a railway, a portion of which extends from Kansas City, in the State of Missouri, by way of Topeka in the State of Kansas, to Denver in the State of Colorado; and the party of the second part is engaged in constructing its railway from a point on the Missouri river opposite the city of St. Joseph, Missouri, by way of Topeka, to a point indefinitely fixed on the southern boundary and in the western portion of the State of Kansas, which railway when completed will be operated in connection with the Chicago, Rock Island & Pacific Railway, at said Kansas City and other points. Therefore the party of the first part leases to the party of the second part, for the term of nine hundred and ninety-nine years, commencing on September 1, 1887, the right and privilege to connect the tracks of its railway with the track of the party of the first part, at North Topeka and Kansas City and Armstrong, and to run, operate and manage its engines, cars, freight and passenger trains,

in both directions, over the railway of the party of the first part, between said points of connection, and to make use of said tracks, etc. The party of the second part covenants that it will pay to the party of the first part, for the use of said railway and appurtenances, annual sums which are particularly specified, together with taxes, etc. The parties covenant, promise and agree with each other as to the manner in which business shall be conducted, controversies settled, etc.; and the party of the second part agrees that it "will do no business as a carrier of persons or property to or from points between North Topeka and Kansas City; it will give reasonable notice to prevent the entry of passengers into the trains, and if despite such notice passengers do enter such trains, it will account for and pay to the party of the first part all fares which may be collected from them." It is further agreed that "this contract is hereby attached to and shall run with the railways of the parties, and enure to and bind the lessees, grantees and successors of each," with a provision, however, for the termination thereof by the party of the second part on giving a specified notice of its intention in writing. It was agreed by the parties to this proceeding that it was under this agreement that the respondent was operating its trains over the line of the Union Pacific, through the city of Lawrence.

The position of the complainant, as stated on the hearing, and also more fully in a printed brief filed in the case, is as follows:

A railway company is incorporated only to do business as a common carrier; when constructed, its road is a public highway, and the public, and every portion of the public, has a right to the use thereof on reasonable and proper terms; and no corporation holding a franchise for the construction and operation of such a road has the right by contract to deprive the public, or any portion of it, of such use, or to absolve itself from its obligation to perform its duties to the public. It can do no act amounting to a renunciation of its duties to the public, or directly tending to disable itself from performing the same. The respondent, in operating its

trains over the tracks of the Union Pacific Company, does so in the capacity of a common carrier, for in no other capacity has it the right to move a train. The record clearly discloses the fact that the respondent is accepting both freight and passengers at Kansas City and carrying them over the leased line to Topeka, and claiming to do so rightfully. It is, therefore, by its own admission, a common carrier over a railway running through the city of Lawrence. There is, therefore, no suspension of its functions as a common carrier between Kansas City and Topeka, even if it had the power to suspend. Again, it is not in the power of the Union Pacific Railway Company to farm out its franchises or the use of the railway to other companies by contracts that relieve such other companies from their obligations to the public; or to secure itself against a natural competition by imposing terms of lease which limit the use of the public, of its road. If such a power be conceded, that company may, by a system of leasing, practically renounce its obligations to the public, and surrender the operation of its road to other companies who would be relieved from their obligation to serve the public as common carriers. It is further claimed that the clause in the contract under which respondent justifies its action is in contravention of statutes of Kansas which are quoted in the brief, and can not, therefore, be relied upon to prevent the full and strict enforcement of the Act to regulate commerce. These statutes are not quoted here, as they are similar to those existing in other States and have for their object to require the performance of the duties of railway companies as common carriers for the general convenience of all the public, and without unjust discrimination. It is further claimed that the manner in which the respondent conducts its business over the Union Pacific road constitutes a violation of Section III of the Act to regulate commerce. To receive business at Kansas City destined for Topeka and points beyond, and to refuse like business at Lawrence destined for the same points, constitutes an undue and unreasonable preference and advantage to the persons whose business is so received, and to the localities between which it is carried on. To offer to the people of Kansas

City transportation facilities for trade and commerce over the leased road, with those sections of Kansas, Colorado, and Nebraska, and the Indian Territory, which lie upon the line of respondent's railway, and to refuse like facilities, or any facilities to the people of Lawrence, is to subject that people to an undue and unreasonable disadvantage. This point is presented very forcibly, and the mischiefs resulting from a discrimination are pointed out. To the point made by the respondent that if the discriminating clause of their contract complained of should be declared void, the entire contract will fail, it is answered that the principle is well settled that a contract illegal in part, but legal as to the residue, is only void as to all its provisions when the parts can not be separated, and that when the illegal part is separable the provisions that are legal will be sustained.

The question which the complainant seeks to raise upon this second point has an importance which extends far beyond the rights involved in the particular case, and the interests of the parties directly concerned or represented therein. It concerns the general right of one railroad company to grant trackage privileges to another, with limitations thereon of any sort which shall make the rights of the latter, as between itself and the public, less complete or its obligations as a common carrier less extensive upon the track to which the privilege extends, than they would be if such latter company were absolute owner and were running its trains over the track as such.

Briefly stated, the case presented is as follows: At the time the contract was entered into, the Union Pacific Railway Company had a very direct line of road from Kansas City in Missouri, through the city of Lawrence, to Topeka. The Chicago, Rock Island & Pacific Railway Company had a line from Chicago, by way of St. Joseph, Missouri, to Topeka, Kansas, and from thence, extending through western Kansas, into Colorado. It had also a line from St. Joseph to Kansas City. It could, therefore, reach Topeka and the points to the west thereof from Kansas City by running its trains by way of St. Joseph, but this would be a route so long and so indirect that the company could not expect to do business

over it between Kansas City and Topeka and the towns further west, with either the promptness or the economy necessary to enable it to meet the competition of other lines. It must, therefore, if it would successfully compete, provide itself with a shorter line. This it might do by constructing a line direct from Kansas City to Topeka; but such a line would parallel that of the Union Pacific, running practically side by side with it, and necessarily competing with it for the local business. Whether the traffic that would be secured would be sufficient to warrant the building of such a line would naturally be the first question to be considered by the respondent company; if it did not promise to be, the thought of obtaining it must either be abandoned or some other means be devised to that end. The Union Pacific Railway Company, on the other hand, it may be assumed, would not desire its road to be thus paralleled, and the interest of the two companies therefore led to negotiations which resulted in the agreement which is now before us. By that agreement the Union Pacific says, in substance, to the respondent company: We will save you the necessity of building a new line, and enable you to accomplish the purpose at which you aim, by giving you the privilege of running your trains over our tracks between Kansas City and Topeka, provided you will undertake not to interfere with our business between those points, and not to make yourselves a common carrier of the local traffic. The proviso is accepted by the respondent, and the contract is entered into. Now it is contended on the part of the complainant, that while it was perfectly competent for the parties to enter into such a contract as they have made, so far as concerns its main purpose, to give trackage privileges, the proviso which thus undertakes to preclude the acceptance of traffic at points the trains of the respondent will pass, is repugnant to law, and for that reason must be declared void, and the contract enforced as if the proviso were not contained in it.

In passing upon this contention it is to be observed, *first*, that by this contract the Union Pacific Railway Company does not in any respect undertake to narrow its own obligations, or relieve itself of any duties imposed upon it by law.

It remains a common carrier to the full extent as before, and the people of Lawrence may enforce against it any right that would have existed if the contract had not been made. We agree fully with the complainant that no common carrier by rail can by any contract with another confer upon the latter any privileges which either directly or otherwise can have the effect to limit the rights which any locality or any person would otherwise under its charter or under common-law principles, have against it. But we do not understand that it is claimed in this case that the Union Pacific is performing its duties as a common carrier between Kansas City and Topeka any less completely than it was performing them before the contract was made; that it runs a less number of trains, or gives to any locality or person fewer facilities or privileges. If such a claim were made, it could not be passed upon without that company being made a party to the proceeding, that it might have opportunity to be heard; and as that has not been done, we may assume for all the purposes of this case, that the Union Pacific Company, so far as the management of its own business is concerned, is not now found fault with. It is the respondent company, if any one, that now wrongs the city of Lawrence, by refusing to receive or deliver traffic at that point.

The grievance of the complainant is that the arrangement as it now exists is unjustly discriminating as against Lawrence, since it gives to Kansas City and Topeka and towns further on, over a road extending through Lawrence, the advantage of trains which are not allowed to accept or deliver traffic at that city, and that it thereby favors to the prejudice of Lawrence the other localities referred to. So far as this discrimination is claimed to operate unjustly, the respondent meets the complaint by the allegation that the arrangement merely accommodates conveniently a business passing between Kansas City and Topeka, which without such arrangement, would be taken on trains not passing through Lawrence, and therefore not capable of accommodating its people; so that by no possibility does the contract wrong that city. Nevertheless it is probably true that the arrangement made between these two railway companies has the effect to

benefit to some extent the cities of Topeka and Kansas City, as well as the companies themselves; and this benefit, if it results from privileges which are unjustly or illegally denied to Lawrence, might of itself be proof of unjust discrimination.

But the main question which concerns us now is whether, while the agreement is conceded to be legal, so far as it makes a trackage arrangement, it is ineffectual in so far as it provides that the respondent shall not accept traffic between Kansas City and Topeka. Can the one part be sustained and the other part held void?

Now it must be admitted, we think, that if this contract were to be sustained and enforced with the proviso stricken out, it would be a very different contract from that which we now have before us. It would, moreover, be a contract which we can not think it probable these parties themselves would ever have agreed to make. The proviso was beyond doubt a principal inducement on the part of the Union Pacific for entering into the arrangement, and we can not conceive that its managing authorities would ever have consented to the respondent coming upon its track to be competitor with it for traffic at all local points. To strike out the proviso by holding it void would therefore be to take from the Union Pacific what probably constituted on its part a vital consideration and inducement for entering into a contract which, it is assumed, must now stand and be enforced without it. This assumption is grounded on the legal principle that an unlawful provision in a contract otherwise good may be rejected and the contract in other respects be sustained. We do not, however, understand this principle to go so far as to warrant the sustaining of a contract when that which is illegal in it is the consideration itself; and the contention in this instance must go to that extent, or it will fail to meet the requirements of the case. The answer to it will then be, that a contract whose consideration is immoral or otherwise illegal and therefore void, is itself void, because it then lacks one of the necessary requisites to any legal validity whatever.

It must further be conceded that to enforce the contract according to the views of complainant would be in effect to make a new contract for the parties, very essentially different

from the one to which they gave assent. It would not only give to the Union Pacific a competitor upon its own tracks, but it would force the respondent into a competition to which it never gave assent, and which might, perhaps, be altogether undesirable and unprofitable. We do not think we have any power to make any such contract for the parties; they must make their own contracts, and when made the contracts must either be valid in their essential provisions, or they must be altogether void. Courts or other tribunals can not remodel and then enforce them, especially when if so remodeled it is obvious the parties themselves would not have made them.

Either therefore this proviso which attempts to preclude the respondent from accepting traffic between Kansas City and Topeka must stand, or the whole contract must be held void. Complainant does not attack the contract as a whole, but concedes that it gives to the respondent rights of trackage, and contends that it not only imposes upon respondent duties and obligations to the full extent contemplated by the parties in making it, but also further duties and obligations under the laws of the state and of the nation. This view, for the reason already given, we can not accept. We think we are wholly without power to give to the complainant the relief desired.

It will be observed that we abstain from discussing the question of the legal validity of the contract which is before us in its entirety, the parties themselves not having raised it, and the Union Pacific Railway Company not having been brought in, as would be essential if that question were to be passed upon. The broad question stated in the beginning of this opinion must therefore, so far as this case is concerned, remain undecided.

BY THE COMMISSION:

The other members of the Commission concur in most of the foregoing opinion, but think the decision in this case can properly go farther than the opinion indicates, and there are public reasons why the question raised should be decided. The exact point presented by the pleadings, and the one of public interest, is whether the refusal of the

respondent to accept and deliver traffic, whether passenger or freight, at stations between Kansas City and Topeka, by reason of its contract with the Union Pacific Railway Company, is a violation of the second section of the Act to regulate commerce prohibiting unjust discrimination, or of the third section in respect to undue or unreasonable preference or prejudice.

We think the question is before us for decision, and, as it relates to the conduct of the respondent in the management of its business and the manner and method in which its business is conducted, it can be passed on with only the present parties before us. The contract which is the ground of the respondent's refusal is only important as furnishing the reason for the refusal and as showing the relations of the respondent to the road of the Union Pacific Company. If an adjudication upon the contract between the contracting parties were called for, all the parties to it would be necessary upon the record.

We think the refusal of the respondent under the evidence in this case is not in contravention of the statute. The argument of the complainant, founded on the provision of the first section, that the term "railroad" as used in the Act shall include all bridges and ferries used or operated in connection with any railroad, and also all the road in use by any corporation operating a railroad, whether owned or operated under a contract, agreement, or lease, might apply to the extent claimed if the respondent operated the road or part of the road of the Union Pacific Company. But it does not. The law deals with the actual situation, and does not create a different one. Its provisions apply to powers that exist and regulate their exercise. The Union Pacific Company operates its own road. The respondent has only a running privilege over a portion of it, to reach points on its own line by a shorter route, operating its own trains, but the tracks, stations, switches, train despatchers and line employees remain in charge of the Union Pacific Company, which company also makes the rules and regulations for the operation of the road. The respondent has no control over the road or its instrumentalities. It has no contract right to use the sta-

tions of the Union Pacific Company or its facilities for business on its route, except switches, water tanks and telegraph lines. It receives and discharges passengers and freight on its own tracks and at its own stations, both at Kansas City and Topeka. Its rights, therefore, are not the general rights of a common carrier upon its own road, but are limited and qualified by the agreement. They are simply contract rights which the law does not and can not enlarge. There is nothing to show that any action under State authority, either legislative or judicial, has condemned the agreement.

The duties of a common carrier are bounded by its rights and powers. Where there is no right or power to render a particular service there can be no duty in that respect. And there can not be unjust discrimination, nor undue preference or prejudice, in refusing a service that it has no right by statute or contract to perform.

The Union Pacific Company is not bound, in the absence of a statute requirement, to grant the use of its road to another company, and in the voluntary grant of a use it may limit the privilege when not otherwise regulated by statute so as to protect itself from injury. This is all that has been done. A running privilege only over its tracks has been given by the Union Pacific Company to the respondent, but no privileges as a common carrier for traffic originating or terminating on the line used by the respondent between Kansas City and Topeka. It can only be used for through traffic. The local business on that line is the business of the Union Pacific Company. There is no complaint that it does not run sufficient trains to accommodate the public, or that its local service is not entirely adequate. If the respondent ran no trains on that line the local service to the public would be the same. The question, therefore, of compelling the respondent to perform a local service is apparently an abstract question more than a practical one. It rests on theoretical reasons rather than grounds of public convenience or necessity. We fail to see that there is any unjust discrimination against the local business on this line, or any undue preference to Topeka or Kansas City for through business.

The respondent, under existing arrangements, has no

authority to do otherwise. The offences charged against it must be predicated of something done for others under similar conditions that is not done for the complaining party. There is nothing done for any one located on the line used under the contract that is not done for complainant. The whole force of complainant's contention is that more facilities would be afforded if respondent rendered the service in question. Conceding this to be true, the respondent explains by showing that it has no power to do so, and this answers the charge.

If the Union Pacific Company, which owns and operates the road, should refuse to do the local business, the contention of the complaint would apply, but it has no application to the respondent. The through business at Kansas City to and from points on the road of the respondent west of Topeka is undoubtedly facilitated by the running privilege in question, and in this respect it is in the public interest. No actual prejudice to the local business at Lawrence, either in rates, in service of cars, or otherwise has been shown, and probably none exists. It is probable the respondent would be glad to share in the local business if at liberty to do so without bad faith, and without losing the privilege for through business.

Running arrangements like the one in question, and with like restrictions, exist in many other parts of the country, and are of great service in transportation. In some instances in large cities several companies run their trains over the tracks of one company for through business, but take no local business from the company that gives the privilege. It has never been shown that this practice injures any one, or that it is not in the public interest. It certainly saves large expenditure for parallel lines and for terminal rights in cities. A decision adjudging such arrangements unlawful could only demoralize transportation to a large extent, and prove extremely prejudicial to carriers as well as to the public.

Upon the grounds considered, the complaint should be dismissed.

THE NEW ORLEANS COTTON EXCHANGE v. THE ILLINOIS CENTRAL RAILROAD COMPANY, THE MICHIGAN CENTRAL RAILROAD COMPANY, THE NEW YORK CENTRAL & HUDSON RIVER RAILROAD COMPANY, THE BOSTON & ALBANY RAILROAD COMPANY, THE TERRE HAUTE & INDIANAPOLIS RAILROAD COMPANY, THE PENNSYLVANIA COMPANY, THE PENNSYLVANIA RAILROAD COMPANY, THE INDIANAPOLIS & ST. LOUIS RAILWAY COMPANY, THE LAKE SHORE & MICHIGAN SOUTHERN RAILWAY COMPANY, THE OHIO, INDIANA & WESTERN RAILWAY COMPANY, THE CLEVELAND, COLUMBUS, CINCINNATI & INDIANAPOLIS RAILWAY COMPANY, THE CHICAGO & GRAND TRUNK RAILWAY COMPANY, THE CENTRAL VERMONT RAILROAD COMPANY, THE CHESHIRE RAILROAD COMPANY, THE CHICAGO & ATLANTIC RAILWAY COMPANY, THE NEW YORK, PENNSYLVANIA & OHIO RAILROAD COMPANY, AND THE NEW YORK, LAKE ERIE & WESTERN RAILROAD COMPANY.

THE NEW ORLEANS COTTON EXCHANGE v. THE CINCINNATI, NEW ORLEANS & TEXAS PACIFIC RAILWAY COMPANY, THE ALABAMA GREAT SOUTHERN RAILWAY COMPANY, THE NEW ORLEANS & NORTHEASTERN RAILROAD COMPANY, THE VICKSBURG & MERIDIAN RAILROAD COMPANY, THE VICKSBURG, SHREVEPORT & PACIFIC RAILROAD COMPANY, THE CINCINNATI, HAMILTON & DAYTON RAILROAD COMPANY, THE CINCINNATI, WASHINGTON & BALTIMORE RAILROAD COMPANY, THE CLEVELAND, COLUMBUS, CINCINNATI & INDIANAPOLIS RAILWAY COMPANY, AND THE PITTSBURG, CINCINNATI & ST. LOUIS RAILWAY COMPANY.

Complaint against Illinois Central R. R. Co. filed March 18, 1889. Additional complaint adding new parties defendant filed April 22, 1889. Answers filed April 8 to June 7, 1889. Complaint against C., N. O. & T. P. R'y Co. and others filed May 4, 1889. Answers filed May 28 to June 7, 1889. Intervening answer of the Meridian Board of Trade filed, on application duly granted, June 17, 1889. Cases heard June 25, 26 and 27, 1889. Briefs filed July 8 to November 6, 1889. Decided April 11, 1890.

1. When questions involve the reasonableness of rates upon the transportation of cotton from the southern States by all-rail lines to northern and eastern mills and Atlantic ports upon through rates and a long haul, on the one hand, and on the other, the local rates of rail carriers to a near port upon a short haul at which their service terminates, they having no associated line of steamships for a continuous carriage to ultimate destination, but the cotton so carried by them to such near port being chiefly for export, and all such rail lines penetrating the same territory and competing for the same business, running north, south, and east in opposite directions, such questions can only be disposed of on broad lines and not from narrow considerations.
2. In considering such questions thus presented, the circumstances and conditions surrounding the traffic in the respective services performed in its carriage by the rail carriers may be, and in these proceedings are found to be substantially dissimilar and wholly unlike.
3. The proportion of one carrier in a through rate upon a long haul often is, and frequently well may be, considerably less than its local rate for hauling the same freight over its own line, without there being any unjust discrimination, unlawful preference, or extortion involved in such a method.
4. The active competition of all these rail carriers for the transportation of such freight, thereby giving them the benefit of a participation in it and lowering the rates for the benefit of the producer and consumer, and furnishing many outlets to markets is one of the results contemplated by the Act to regulate commerce and which it was intended to promote.
5. In determining such questions, a comparison of rates based upon the doctrine that the rate per ton per mile for each of the different services so performed should be the same is not applicable, citing former decisions of the Commission upon this subject.
6. In solving questions of this character, the Commission will look at and consider every fact, circumstance, and condition surrounding the traffic and of the service performed in its transportation, and if the competition of water carriers at any point is such as to be large, active, and of controlling force, the all-rail lines competing for the traffic at the same point may make rates that are reasonable and just

in view of such competition and which will enable them to participate in the carriage of the traffic and are not obliged to go out of the business and leave it as a monopoly to water carriers.

7. The method of compressing cotton for shipment from the southern States is one that is found to be absolutely necessary in the case of long through hauls by rail, or where the cotton is carried by coastwise steamers or by ocean vessels for export, and the difference in the rate of transportation of compressed and uncompressed cotton by rail carriers should be the actual and necessary cost of compressing.
8. Upon the facts found in these cases, the Commission will not order the rail carriers to transport cotton on flat cars instead of in box cars to New Orleans, the rate being the same on each, no injury being shown to have resulted to petitioners or to that city, or to any shipper or producer from the carriage in box cars.
9. The Commission by adjustment corrects the rates at Meridian and Jackson, Mississippi, on compressed and uncompressed cotton carried to New Orleans, respectively, over the lines of the Cincinnati, New Orleans & Texas Pacific Railway and the Illinois Central Railroad; and holds that the complaint as to the relative reasonableness of rates at other stations on the Illinois Central Railroad in Mississippi and Tennessee to New Orleans is not sustained.

B. R. Forman, Esq., for petitioner.

John Dunn, Esq., for the Illinois Central Railroad Company.

H. H. Poppleton, Esq., for Cleveland, Columbus, Cincinnati & Indianapolis Railway Company and the Indianapolis & St. Louis Railway Company.

J. W. Fewell, Esq., for Meridian Board of Trade.

Edward Colston, Esq., for the Cincinnati, New Orleans & Texas Pacific Railway Company and affiliated companies.

George C. Greene, for Lake Shore & Michigan Southern Railway Company.

C. W. Fairbanks, for Ohio, Indiana & Western Railway Company.

J. T. Brooks, for Pennsylvania Company and Pittsburgh, Cincinnati & St. Louis Railway Company.

J. A. Buchanan, for New York, Lake Erie & Western Railroad Company, and New York, Pennsylvania & Ohio Railroad Company.

James A. Logan, for Pennsylvania Railroad Company.

Ashley Pond, for Michigan Central Railroad Company.

Frank Loomis, for New York Central & Hudson River Railroad Company.

Samuel Hoar, for Boston & Albany Railroad Company.

E. W. Meddaugh, for Chicago & Grand Trunk Railway Company.

John G. Williams, for Terre Haute & Indianapolis Railroad Company.

Johnson & Slick, for Chicago & Atlantic Railway Company.

E. W. Strong, for Cincinnati, Washington & Baltimore Railroad Company.

REPORT AND OPINION OF THE COMMISSION.

BRAGG, *Commissioner* :

The main question in each of these cases being the same and the lesser in each being much alike, by agreement of parties and for their convenience, as well as that of the Commission, they were heard together, it being agreed that the evidence taken on the hearing, so far as competent and relevant, should be considered as applying to each case separately.

The main question in the one is the relative reasonableness of rates from stations on the lines of the Illinois Central Railroad Company in Kentucky, Tennessee, and Mississippi, on cotton transported by this carrier to New Orleans as compared with the rates from the same stations to eastern markets, mills, and Atlantic ports, compared according to distance. The points particularly selected on the Illinois Central railroad are Aberdeen, Parsons, Durant, Vaiden, and points south of Wickliffe, Kentucky. And the main question in the other case is the relative reasonableness of rates from Meridian, Mississippi, on cotton transported over the line of the Cincinnati, New Orleans & Texas Pacific Railway Company from Meridian to New Orleans as compared with the rates on cotton transported by this carrier from Meridian over its line *via* Cincinnati and associated lines to eastern mills, markets, and Atlantic ports, as compared with each

other according to distance, and the station particularly selected on the New Orleans, Cincinnati & Texas Pacific Railway is Meridian.

Another question made in the case of each carrier is of the hauling of uncompressed cotton to New Orleans in box cars instead of hauling it on flat cars. No objection seems to be made by the complainant to the difference allowed by the Illinois Central Railroad Company in the rates between compressed and uncompressed cotton to New Orleans, which is usually 25 cents per bale. But the complainant insists that the difference made by the Cincinnati, New Orleans & Texas Pacific Railway Company of 65 cents per bale between compressed and uncompressed cotton carried from Meridian, Mississippi, to New Orleans, is entirely too great.

The relative reasonableness and justness of cotton rates from certain points in Mississippi and Tennessee to New Orleans.

The Board of Trade of the city of Meridian was allowed to intervene as a party in the case made by the petitioner against the Cincinnati, New Orleans & Texas Pacific Railway Company.

The main question involved in these cases is one of the most important that has yet been brought before us in its practical bearings upon the movement of agricultural products, and the other and lesser questions are such as are very vital to shippers as well as carriers. To some extent it becomes necessary that the findings of fact made by the Commission in these two cases should be separate, although as to the main question, and the hauling of uncompressed cotton on flat or in box cars to New Orleans, they are in substantial effect much the same.

In the case against the Illinois Central Railroad Company, from the evidence adduced, we find the material facts to be as follows: The complainant is a corporation organized under the laws of the State of Louisiana, composed of merchants, traders, etc., dealing in cotton. The Illinois Central

Railroad Company is a corporation created by the laws of the State of Illinois, and operates under lease the Chicago, St. Louis & New Orleans Railroad between East Cairo and New Orleans through Kentucky, Tennessee, Mississippi, and Louisiana, and also the Yazoo & Mississippi Valley Railroad between Parsons, Jackson, and Durant, Mississippi, and the Canton, Aberdeen & Nashville Railroad. All of this portion of its system of roads is known as the Southern Division of the Illinois Central Railroad Company.

The table below shows the comparative rates per bale on cotton from stations on the Southern Division of the Illinois Central Railroad Company to New Orleans, and the Illinois Central's proportion to Cairo on through shipments to eastern points :

Miles.	Rate per bale to N. Orleans.	I. C. proportion to Cairo of through rate to Eastern points.
50	\$1 30	\$1 67½
100.....	1 75	1 80
150.....	2 25	1 80
200.....	2 50	2 00
250.....	2 70	2 55
300.....	2 75	2 65
350.....	2 75	2 75
400.....	2 75	2 80
450.....	2 75	2 95
500.....	2 75	3 05

The following table shows the distances from the principal stations on the Southern Division of the Illinois Central Railroad to New Orleans and Cairo, respectively :

ILLINOIS CENTRAL RAILROAD, SOUTHERN DIVISION.

Statement showing all Stations on Southern Division, Illinois Central Railroad, with Distances from Cairo, Ill., and New Orleans, La.; also Junction Stations and Names of Connecting Roads.

Name of Station.	Miles from Cairo.	Miles. from New Orleans.	Opposite Junction Station, name of connecting road.
Cairo, Ill.....	...	550	
East Cairo, Ky.....	2	548	
Wickliffe, "	7	543	
Bardwell, "	16	534	
Arlington, "	22	528	
Clinton, "	30	520	
Fulton, "	44	506	Newport News & Miss. Valley.

Name of Station.	Miles from Cairo.	Miles from New Orleans.	Opposite Junction Station, name of connecting road.
Martin, Tenn.....	55	495	Nashville, Chatta. & St. Louis.
Sharon, ".....	63	487	
Greenfield, Tenn.....	69	481	
Bradford, ".....	75	475	Louisville & Nashville.
Milan, ".....	86	464	
Medina, ".....	95	455	
Jackson, ".....	109	441	Mobile & Ohio.
Medon, ".....	120	430	
Toon's, ".....	130	420	
Bolivar, ".....	137	413	Memphis & Charleston,
Hickory Valley, Tenn...	148	402	
Grand Junction, "...	156	394	
Michigan City, Miss.....	162	388	
Lamar, ".....	168	382	
Holly Springs, ".....	181	369	
Waterford, ".....	189	361	
Abbeville, ".....	200	350	
Oxford, ".....	210	340	
Taylor's, ".....	218	332	
Water Valley, ".....	227	323	
Coffeeville, ".....	240	310	
Torrance, ".....	248	302	Miss. & Tenn., for Memphis.
Grenada, ".....	256	294	
Duck Hill, ".....	268	282	
Winona, ".....	279	271	
Vaiden, ".....	289	261	
West's, ".....	299	251	
Durant, ".....	309	241	Branch to Kosciusko.
Goodman, ".....	317	233	
Picken's, ".....	324	226	
Vaughan's, ".....	330	220	
Canton, ".....	344	206	
Madison, ".....	355	195	
Jackson, ".....	367	183	Natchez, Jackson & Columbus. Vicksburg & Meridian.
Byram, ".....	376	174	
Terry, ".....	383	167	
Crystal Springs, ".....	392	158	
Hazlehurst, ".....	401	149	
Beauregard, ".....	411	139	
Wesson, ".....	412	138	
Brookhaven, ".....	421	129	
Bodue Chitte, ".....	431	119	
Summit, ".....	442	108	
McComb City, ".....	445	105	
Magnolia, ".....	452	98	
Chatawa, ".....	458	92	
Osyka, ".....	462	88	
Tangipahoa, La.....	472	78	
Amite, ".....	482	68	
Hammond, ".....	497	53	
Manahae, ".....	513	37	
Kenner, ".....	540	10	
New Orleans, ".....	550	..	

The rates of the defendant, the Illinois Central Railroad Company, from interior points to New Orleans are much about the same as those of other southern roads for similar distances and upon freight transported under substantially similar circumstances and conditions. To a considerable extent they are made to meet the competition of rail and water lines operated east and west crossing this road at junction points and reaching the Mississippi river; the competition of that river itself at several points, as also the Yazoo river; and this is also true of the rates made by it on shipments of cotton over its line *via* Cairo, east, to northern and eastern mills, markets, and Atlantic ports.

The rate on cotton from Cairo to Boston and Lowell, and points taking same rates, is 37 cents per hundred pounds; to New York and New York points, 32 cents per hundred pounds; to Philadelphia and Philadelphia points, 30 cents per hundred pounds. The percentages of this rate are divided between the Illinois Central Railroad Company and the eastern lines, according to whether the freight leaves the Illinois Central at Effingham or at Mattoon, or by the different lines named below, in the proportion stated in this table.

Rates on Cotton from Cairo.

Date.	Boston and Lowell.	New York.	Phila- delphia.
October 7, 1885.....	37c.	32c.	30c.
October 1, 1888.....	37c.	32c.	30c.

Divisions—Via Odin and Continental Line.

		Miles.	Per cents.	Amt. per 100 lbs.
To Boston.....	Ill. Central.....	121	14.2	5.25
	Eastern Lines....	1,169	85.8	31.75
To New York.....	Ill. Central.....	121	15.3	4.9
	Eastern Lines....	1,071	84.7	27.1

Divisions—Via Effingham and Star Union Line.

To Boston.....	Ill. Central.....	166	11.3	4.18
	Eastern Lines....	*	88.7	32.82
To New York.....	Ill. Central.....	166	14.4	4.61
	Eastern Lines....	*	85.6	27.39

Divisions—Via Mattoon and White Line.

To Boston.....	Ill. Central.....	193	14.97	5.54
	Eastern Lines....	1,096	85.03	31.46
To Lowell.....	Ill. Central.....	193	14.89	5.51
	Eastern Lines....	1,103	85.11	31.49
To New York.....	Ill. Central.....	193	15.66	5.01
	Eastern Lines....	1,040	84.34	26.99

* Where eastern distance is not given the line is operated *via* two or more railroads.

Divisions—Via Mattoon and Empire Line.

		Miles.	Per cent.	Amt. per 100 lbs.
To New York.....	Ill. Central.....	198	16.26	5.20
	Eastern Lines....	*	83.74	26.80

Divisions—Via Tolono and Red Line.

To Boston.....	Ill. Central.....	228	17.89	6.43
	Eastern Lines....	1,068	82.61	30.57
To Lowell.....	Ill. Central.....	228	17.8	6.40
	Eastern Lines....	1,060	82.7	30.60
To New York.....	Ill. Central.....	228	18.17	5.81
	Eastern Lines....	1,027	81.83	26.19

Divisions—Via Champaign & Lackawanna Line.

To Boston.....	Ill. Central.....	237	16.73	6.19
	Eastern Lines....	1,180	83.27	30.81
To New York.....	Ill. Central.....	237	18.15	5.81
	Eastern Lines....	1,069	81.85	26.19

Divisions—Via Champaign & Nickel Plate Line.

To Boston.....	Ill. Central.....	237	17.95	6.64
	Eastern Lines....	1,068	82.05	30.36
To New York.....	Ill. Central.....	237	18.4	5.69
	Eastern Lines....	1,051	81.6	26.31

Divisions—Via Tuscola & Lackawanna Line.

To Boston.....	Ill. Central.....	215	15.05	5.57
	Eastern Lines....	1,214	84.95	31.43
To New York.....	Ill. Central.....	215	16.81	5.23
	Eastern Lines....	1,108	83.69	26.78

Divisions—Via Tuscola & Erie Despatch.

To Boston.....	Ill. Central.....	215	15.24	5.64
	Eastern Lines....	*	84.76	31.36
To Lowell.....	Ill. Central.....	215	14.82	5.43
	Eastern Lines....	*	85.18	31.52
To New York.....	Ill. Central.....	215	16.68	5.34
	Eastern Lines....	*	83.32	26.66

Divisions—Via Tuscola & Nickel Plate Line.

To Boston.....	Ill. Central.....	215	15.9	5.83
	Eastern Lines....	1,137	84.1	31.12
To New York.....	Ill. Central.....	215	16.29	5.21
	Eastern Lines....	1,320	83.71	26.79

* Where eastern distance is not given the line is operated via two or more railroads.

Divisions—Via Tuscola & Traders' Despatch.

		Miles.	Per cent.	Amt. per 100 lbs.
To Boston.....	Ill. Central.....	215	14.77	5.46
	Eastern Lines....	*	85.23	31.54
To New York.....	Ill. Central.....	215	16.29	5.21
	Eastern Lines....	1,105	83.71	26.79

Divisions—Via Paxton & Interstate Despatch.

To Boston.....	Ill. Central.....	262	18.82	6.77
	Eastern Lines....	*	81.68	30.23
To Lowell.....	Ill. Central.....	262	17.82	6.59
	Eastern Lines....	*	82.18	30.41
To New York.....	Ill. Central.....	262	19.98	6.89
	Eastern Lines....	*	80.02	25.61

Divisions—Via Paxton & Midland Line.

To Boston.....	Ill. Central.....	262	19.62	7.26
	Eastern Lines....	1,073	80.38	29.74
To Lowell.....	Ill. Central.....	262	19.52	7.22
	Eastern Lines....	1,080	80.48	29.78
To New York.....	Ill. Central.....	262	20.48	6.55
	Eastern Lines....	1,017	79.52	25.45

Divisions—Via Matteson & Blue Line.

To Boston.....	Ill. Central.....	837	25.05	9.27
	Eastern Lines....	1,040	74.95	27.73
To Lowell.....	Ill. Central.....	837	24.93	9.12
	Eastern Lines....	1,047	75.07	27.78
To New York.....	Ill. Central.....	837	26.15	8.87
	Eastern Lines....	984	73.85	23.63

Divisions—Via South Lawn & Great Eastern Line, National Despatch or West Shore Line.

To Boston.....	Ill. Central.....	846	25.05	9.27
	Eastern Lines....	*	74.95	27.73
To Lowell.....	Ill. Central.....	846	24.93	9.22
	Eastern Lines....	*	75.07	27.78
To New York.....	Ill. Central.....	846	26.15	8.87
	Eastern Lines....	*	73.85	23.63

Divisions—Via Chicago & Nickel Plate Line.

To Boston.....	Ill. Central.....	865	26.7	9.88
	Eastern Lines....	1,002	73.3	27.12
To New York.....	Ill. Central.....	865	27.34	8.75
	Eastern Lines....	970	72.66	23.25

* Where eastern distance is not given the line is operated via two or more railroads.

Divisions—Via Chicago & Erie Despatch.

		Miles.	Per cent.	Amt per 100 lbs.
To Boston.....	Ill. Central.....	365	24.38	9.02
	Eastern Lines..	*	75.62	27.98
To Lowell.....	Ill. Central.....	365	23.83	8.82
	Eastern Lines..	*	76.17	28.18
To New York.....	Ill. Central.....	365	26.55	8.50
	Eastern Lines..	*	73.45	23.50

This table shows rates from local points in Mississippi to New Orleans for cotton shipments over the line of the Illinois Central Railroad:

Rates on Cotton per Bale via Illinois Central R. R. to New Orleans.

Miles.		Uncom-pressed.	Compressed.
	From Jackson, Miss.:		
183	July 16, 1887.....	\$2 50	\$2 00
	November 1, 1887.....	2 50	
	September 10, 1888.....	2 25	
	From Aberdeen, Miss.:		
349	July 16, 1887.....	3 00	2 50
	November 1, 1887.....	2 75	2 50 depot or shipside.
	From Holly Springs, Miss.:		
369	July 16, 1887.....	2 45	
	November 1, 1887.....	2 75	
	September 10, 1888.....	2 30	2 25 shipside.
	From Yazoo City, Miss.:		
228	April 23, 1887.....	1 85	* 2 35 shipside.
	November 1, 1887.....	1 85	* 2 35 shipside.
	From Parsons, Miss.:		
298	April 23, 1887.....	3 00	No compress.
	From Vaiden, Miss.:		
261	November 1, 1887.....	2 75 }	No compress.
	September 10, 1888.....	2 75 }	
	From Durant, Miss.:		
241	November 1, 1887.....	2 75 }	No compress
	September 10, 1888.....	2 65 }	

The table below shows the rates of freight on cotton in effect June 4, 1889, from points named below to Boston,

* Includes 50 cents per bale for compression and 15 cents per bale for transfer at New Orleans.

Mass., and Boston points, which are the prevailing rates. Rates *via* New Orleans are local rates to New Orleans with rates by vessel from New Orleans to Boston added.

To Boston, Mass., from—	Rates in cents per 100 lbs.		
	Via Cairo, Ill.		Via New Orleans.
	Com-pressed.	Uncom-pressed.	Com-pressed.
Jackson, Miss.	75	.....	78
Aberdeen, “	72	85	88
Holly Springs, Miss.	70	.....	83
Yazoo City, “ .....	.....	85	71
Parsons, “ .....	.....	100	98
Vaiden, “ .....	.....	100	93
Durant, “ .....	.....	100	91

Cotton from Parsons, Vaiden, and Durant is shipped uncompressed to New Orleans and compressed at that point.

When cotton is thus shipped *via* New Orleans to Boston and Boston points from local stations on the Illinois Central Railroad, the rate is made up as follows: Local rate from station in Mississippi on the Illinois Central Railroad to New Orleans; then the vessel gives a through bill of lading from New Orleans to New York, and the cotton is taken from New York by another vessel or by rail to Boston or Boston points under this through bill of lading. The rates stated in this last table were those in effect June 4, 1889. At that time the vessel rate from New Orleans to Boston points was 46 cents per hundred pounds, but since that time it is understood that this rate is 38 cents per hundred pounds, and that this is now the prevailing rate.

As a general rule, this company charges 25 cents per bale less on compressed than on uncompressed cotton carried over its line to New Orleans, and in regard to this there seems to be no contest on the part of the complainant. When cotton is furnished to this company by the shipper already compressed, to be shipped from its Southern Division to eastern points *via* Cairo, it pays nothing for the compression; but if cotton is furnished to it by the shipper which is uncompressed, with the right to compress it in transit, then the company has it compressed at Cairo, where the charge

for compression is usually about 10 cents per hundred pounds, and the cost of this is paid out of the entire through rate, because the lines east of Cairo will not receive any other than compressed cotton to be carried to eastern points, and therefore ten cents per hundred pounds for cost of compression at Cairo is allowed out of the entire through rate *via* Cairo to eastern points.

About 20 to 25 bales to the box car is what is carried of uncompressed cotton; about 40 to 45 bales to the box car is what is carried of compressed cotton: and about 51 bales of uncompressed cotton is what is carried on a flat car. There is more hazard arising from carrying cotton uncompressed on a flat car than in a box car, on account of liability to fire. There is also some reason why it is preferable to carry uncompressed cotton in a box car instead of a flat car to avoid rain and consequent dampness and delay in drying it at its destination before turning it over to the compress to be compressed. During the season of 1887-88 about 91 per cent. of the cotton from the Illinois Central stations to New Orleans was carried uncompressed. The rate made by the all-rail carriers from New Orleans to New York and eastern points on cotton is 50 cents per hundred pounds, and this is done to meet, by way of competition, the ocean rate from New Orleans to such eastern points. It appears, however, that very little cotton is carried by the all-rail carriers from New Orleans to these eastern points, and that during the last cotton season, from September 1st, 1888, to March last, there was only one shipment of this kind direct from New Orleans to Atlantic ports carried by the defendant, the Illinois Central Railroad Company, and that this consisted of seventeen bales.

The expenses of handling a flat bale of cotton in New Orleans are now \$1.10, which include the following items:

Storage.....	30 cents.
Sampling.....	15 “
Drayage to ship.....	15 “
Compressing.....	50 “

The expenses of a bale of free-on-board cotton for export in New Orleans are 16 cents, divided equally between the buyer and the seller of the cotton. If there is a sale of cotton in New Orleans, the commissions are to be added, which are usually $2\frac{1}{2}$ per cent. "Free-on-board" business means cotton placed with an exporter in New Orleans. About two-thirds of the cotton sold in New Orleans to exporters is bought without the aid of a broker. A broker is an expert who is employed by the exporter to buy cotton from factors or commission merchants. The broker samples it and has it put on the vessels designated by the exporter. Where cotton is bought by a broker, his charge is 15 cents a bale, and 10 cents for marking and sampling, making 25 cents per bale. Where cotton is bought in the interior for a foreign or American mill the only expenses attendant upon it in New Orleans would be the disbursements of the ships, drayage, fees to stevedores, and charges of that character. The ship makes an uncompressed rate from the fact that it pays 50 cents per bale for compressing. The exporters are the real buyers in New Orleans, and cotton bought there is called "spot" cotton. The cost of compressing, except in the case of export cotton, comes out of the cotton in one way or another. Foreign ships have a practice of screwing the cotton into the ships, but this is not done by coastwise vessels, and the ship pays out of the freight money for screwing into the ship. At New York they do not screw the cotton in the ship, but they demand that compressed cotton be given them and do not pay 50 cents for compressing.

A bale of cotton compressed in the interior and billed through New Orleans to Liverpool is not subjected to any charges in New Orleans; a through bill of lading by rail and steamer covers all the charges. If cotton comes to New Orleans by railroad, which is not factors' cotton, the compressers take that cotton, haul it to the compress, compress it, and haul it to the ship for the sake of the compressing charged; but if it be factors' cotton then the cost of compressing does not include the drayage. There has been a reduction of fifty cents a bale in the expenses of handling

cotton in New Orleans since the cheap rates north and east were made from the cotton-producing country. At every depot in New Orleans the Cotton Exchange has watchmen and supervisors to see that cotton is properly sampled, and that not more than six ounces is taken out of each bale in sampling, and that it is properly handled; and for this they charge the factors so many cents a bale and they turn over to the factors the loose cotton taken out by sampling, which does not exceed four ounces per bale, and this pays the factors the fee they are charged by the Cotton Exchange. The ship in New Orleans, when it goes to foreign ports, pays for the compression. Coastwise steamers that go to New York and other eastern ports do not pay for the compression; they make a rate on compressed cotton. The ocean rate from New York to Liverpool is about $\frac{1}{4}$ a cent lower per pound than the New Orleans rate. The rate from New York is on compressed cotton, so that it reduces the apparent difference to the extent of 50 cents per bale. There are seventeen compresses in New Orleans. The depth of the river at its mouth has been increased from 20 to 26 feet within the last few years. The brokerage on free-on-board cotton used to be fifty cents per bale and is now twenty-five cents. If cotton when received at ship's side is found to be improperly compressed, then it is re-compressed under the direction of the Maritime Association, which is constituted of ships' agents principally, and a party who would have received from the ship 50 cents for compression loses this.

Only about 10,000 bales of cotton are used at New Orleans in the mills there, but a great many people bring cotton there and keep it during the season to operate with, as they do in Liverpool or New York. "Operating" means holding for a rise or for speculation. The factor advances money to the people in the interior to make a crop of cotton, for which he charges legal interest, and, in addition, $2\frac{1}{2}$ per cent. on sales. It appears that the through rates from interior points in Mississippi on cotton, all rail, and part rail and part water, to Boston and other eastern points, are made to meet the competition of rates *via* New Orleans and coast-

wise vessels to same points, and are practically much the same.

The practice of buying cotton at interior towns and cities and shipping eastward for American mills and the European trade has sprung up in the last nine years and is a large business. By this method of dealing, country towns and cities, generally, in the interior, have become markets, and it has greatly reduced the receipts of cotton at many of the American ports to which cotton was formerly carried. Among these interior markets, one of the largest is the city of Memphis. At Memphis, for example, the following table will show in what proportion cotton was purchased during the period named, for export and by spinners :

Cotton Shipments from Memphis as Reported by the Secretary of the Memphis Cotton Exchange:

September 1 to August 31.	1886-87.	1887-88.
	653,061 bales.	631,859 bales.
Taken by southern rail and water transportation lines.....	138,379 "	148,152 "
Reported sales for export.....		362,625 "
" " spinners		238,025 "
Shipments from September 1st, 1888, to May 10th, 1889..		680,423 "
Taken by southern rail and water transportation lines...		152,070 "
Reported sales for export.....		371,625 "
" " spinners.....		223,250 "

But, notwithstanding these important changes, New Orleans is still by large odds the market at which more cotton is bought and sold and received than any other in the country. Gross receipts of cotton at New Orleans for years 1886-87 were 1,930,771, and for 1887-88 were 1,935,773.

The consumption of cotton in the United States is steadily increasing. The consumption of northern mills for the year 1888 was 2,030,000 bales, and the southern 500,000. This was an increase in ten years of 805,000 bales. Of this it seems that 1,441,920 bales reached the spinner by overland rail movement, leaving to be carried from the ports, for home consumption, 1,088,080 bales.

The conditions of transportation and markets in the last

few years in reference to the cotton trade have been much changed. Within that time new lines of railroad have been constructed in the cotton-producing country, many of them having their interests and terminals at other ports and in other directions than New Orleans. Where these have come in contact with the lines of carriers transporting cotton to New Orleans they have necessarily influenced and affected their action to some extent. These lines have their terminals at markets and ports that have been reaching out for a share of this cotton trade; and on account of their connecting lines and the business it furnishes it has been to the interest of the rail carriers to haul some of it to these markets, mills, and ports. The outcome of all this is that under the present state of things the producer oftentimes is enabled to sell his cotton at interior points of production, all things considered, at a price nearly equal to that ruling at New Orleans; and this is as true of other Gulf and other Atlantic seaports with their markets as it is at New Orleans. In this way a large amount of cotton in the States of Arkansas, Mississippi, Tennessee, and Alabama, that would otherwise have gone to New Orleans, is diverted to other ports and to eastern mills.

The cotton transported to New Orleans over the line of the Illinois Central Railroad has not materially varied during each of the last four years, as appears from the following table :

1884-85.	1885-86.	1886-87.	1887-88.
200,637	242,092	207,822	251,148

The defendant, The Illinois Central Railroad Company, hauled over its lines to points other than New Orleans, for the season of 1887-88, 103,190 bales of cotton. Of this amount 14,593 bales went to Memphis, and the remaining 88,597 bales went to northern and eastern mills and markets. Of this aggregate of 88,597 bales, 52,891 bales came from junction stations—that is, stations at which the lines of the Illinois Central Railroad Company were crossed by other and competing lines, or at junction points where lines competing with the Illinois Central Railroad Company existed.

From September 1st, 1888, to March 31st, 1889, the number of loaded box cars received at Cairo from the Southern Division of the Illinois Central Railroad Company, north-bound, was 11,012; and during the same period the number of empty box cars received at Cairo from the same lines, north-bound, was 6,739. It is claimed by the defendant, the Illinois Central Railroad Company, and the evidence so shows, that the bulk of the cotton carried by it over its line by way of Cairo to northern and eastern mills and markets during this period, as well as previously, and covering the time complained of by the complaint, was hauled in cars that would otherwise have gone north empty; and this is substantially true of the Cincinnati, New Orleans & Texas Pacific Railway Company.

The grades of the Illinois Central railroad north of Cairo are undoubtedly lighter and better adapted to cheap transportation than those south of that point, but it does not appear that the grades of this road south of Cairo are heavy grades or peculiarly expensive. The proximity of that portion of the line of the Illinois Central railroad north of Cairo to the coal fields of Illinois in relieving it from the greater cost of transportation is, indeed, quite an item. But that feature of the business north of Cairo which would reduce most the cost of transportation is the fact that the bulk of the traffic transported over the lines of this road is about three times greater, in proportion to the distance, north of Cairo than south of that point. When these three features of the transportation question north of Cairo are taken into consideration with their combined effects, they do undoubtedly show that the cost of transportation north of Cairo to the Illinois Central Railroad Company in operating its line would be largely less for a corresponding distance than south of that point. And when all the circumstances and conditions surrounding the traffic and the different methods and routes of transportation are considered, the fact becomes apparent that transporting cotton from this region north and east to northern and eastern mills, or south, chiefly for export, is not in each instance a like and contem-

poraneous service. The cotton goes in opposite directions, to different destinations, with the ocean rate as part of the through rate in one and with no ocean rate in the other, and under circumstances and conditions that are substantially unlike.

It appears from the evidence that the net earnings of this company from its Southern Division during the year 1888 were 4.6 per cent. on \$33,691,100 of its bonds and stock, though its permanent expenditures for that year amounted to the very small sum of only \$38,115.57.

In the case of the Cincinnati, New Orleans & Texas Pacific Railway Company the material facts found as to relative rates charged by defendant on cotton carried by it from Meridian to New Orleans, and in the opposite direction from Meridian *via* Cincinnati over its own lines and associated lines to northern and eastern mills and Atlantic ports, and the causes that have produced these are, in substance, much the same as in the case of petitioner against the Illinois Central Railroad Company, excepting that the evidence does not with the same distinctness show that there is the same large return of empty cars north-bound, although it is clearly inferable that this exists to a large extent. It has also the advantage of important coal fields along its line in Alabama. The substance of this evidence found in other respects in the case of the Illinois Central Railroad Company is also much the same, except as to the difference made in the rate between compressed and uncompressed cotton carried by the Cincinnati, New Orleans & Texas Pacific Railway Company from Meridian to New Orleans. And there are a few additional facts involved in the evidence in this case which are found, and which upon the evidence are necessary to be found, besides those set forth in the report of the case of the Illinois Central Railroad Company. Substantially all the cotton on the line of the New Orleans & Northeastern railroad, one of the links of the Cincinnati, New Orleans & Texas Pacific Railway Company, extending from New Orleans to Meridian, a distance of 196 miles, is carried by this railroad to New Orleans.

The Cincinnati, New Orleans & Texas Pacific Railway Company has no funded debt, but after paying taxes, rentals, and deduction for reserve sinking fund, its net income for the year 1888 was \$187,636.66.

The through rate from Meridian to northern and eastern mills and Atlantic ports, compressed cotton, *via* the Cincinnati, New Orleans & Texas Pacific railway was 73 cents per hundred pounds, from October 23, 1888, to September 7, 1889, and since September 7, 1889, has been 71 cents per hundred pounds, while by the line of the East Tennessee, Virginia & Georgia Railway from Meridian to the same eastern points it is 71 cents per hundred pounds.

In the fall of the year 1888, upon complaint of petitioner against the Cincinnati, New Orleans & Texas Pacific Railway Company *et al.* (see 2 I. C. C. Rep. 375), the Commission then ordered that the rate on compressed cotton carried by this company from Meridian to New Orleans should not exceed \$1.50 per bale; and under that order, in December, 1888, the Cincinnati, New Orleans & Texas Pacific Railway Company reduced its rate on compressed cotton from Meridian to New Orleans from \$2.00 to \$1.50 per bale, and at the same time reduced its rate on uncompressed cotton from Meridian to New Orleans from \$2.25 per bale to \$2.15 per bale. These reductions were immediately met by the Southern Railway & Steamship Association, which reduced the rate on cotton over its lines and in its territory from Meridian to Atlantic ports, ten cents per hundred pounds, or 50 cents per bale. The effect of this was that the East Tennessee, Virginia & Georgia Railway, which is a member of the Southern Railway & Steamship Association, carried out of Meridian to Brunswick, Georgia, about two-thirds of all the cotton for northern and eastern mills and Atlantic ports received at Meridian during the season ending in 1889, which was a much larger proportion than that carrier ever carried from Meridian before, while the Cincinnati, New Orleans & Texas Pacific Railway, which had formerly carried more cotton from Meridian to northern and eastern mills, markets, and ports than the East Tennessee, Virginia & Georgia Railroad

Company, after that carried correspondingly less, and New Orleans received no additional cotton by this change.

The city of Meridian handles about 50,000 bales of cotton during a cotton season, the greater portion of which is brought there to be compressed. The charges for compressing cotton at Meridian paid by the different railroads to New Orleans and to eastern mills and Atlantic ports by different carriers are as follows: By the Cincinnati, New Orleans & Texas Pacific, on cotton, per bale, from Meridian to New Orleans, 65 cents; by the Mobile & Ohio Railroad, on cotton, per bale, to northern and eastern mills, 55 cents; by the East Tennessee, Virginia & Georgia Railway, on cotton, per bale, carried to northern and eastern points and for export, 65 cents per bale.

It costs from 30 to 32 cents on a good compress to compress a bale of cotton, and if there are less than 50,000 bales to compress it may cost a little more. The charge for compressing a bale of cotton at New Orleans and Cairo is 50 cents per bale. Two more bands are placed upon a bale of cotton compressed for export at Meridian than upon a bale compressed for domestic consumption; and this is said to be necessary on account of the greater length of haul, and perhaps is due also, to some extent, to the fact that cotton compressed for export has to undergo a process of screwing into the hold of the ship. When cotton is brought to a compress by a railroad carrier to be compressed, the compress unloads the cotton for the purposes of compressing it, and then re-loads it again without any extra charge except that which is embraced in the charge for compression.

If cotton goes to Brunswick from Meridian *via* the East Tennessee, Virginia & Georgia Railway, whether for export or for northern and eastern mills and markets, then that company pays the compress charge at Meridian and the ship at Brunswick refunds this to that carrier. If cotton is furnished to the Cincinnati, New Orleans & Texas Pacific Railway at Meridian to be transported to northern and eastern mills, markets, and Atlantic ports for export, which is

uncompressed, then that company has it compressed at Meridian, pays the compress charges, and the expense of these compress charges is paid from the through tariff rate by the Trunk Lines, and the shipper gets the benefit of it in the reduced rate on compressed cotton. If cotton is furnished the Cincinnati, New Orleans & Texas Pacific Railway at Meridian to be carried east, which has already been compressed by the shipper, then the charge for compressing is not refunded to the shipper, but the shipper receives the benefit of it in the lower rate.

The conclusions and opinion of the Commission upon the above findings of fact in these cases are now stated.

The chief question presented by the complaint is the relative reasonableness and justness of the rates on cotton transported by the defendant, the Illinois Central Railroad Company, from the stations on its lines south of Cairo to New Orleans as compared with the rates on cotton transported by it and its connecting lines to northern and eastern points from the same stations. These rates not being charged over the same line, in the same direction, the shorter being included within the longer haul, it is not claimed that they are violative of the fourth section of the Act to regulate commerce. But it is insisted that they are violative of the first, second and third sections of that statute in several respects. It is claimed that these rates to New Orleans, being higher in proportion for a shorter haul in transporting the same kind of traffic than the rates to northern and eastern points from the same stations, that this demonstrates that they are not reasonable and just. It is also claimed that they are not relatively reasonable and just and that this results in an unreasonable and unjust discrimination against New Orleans and in favor of northern and eastern localities. Much stress is also laid upon the fact that these rates to New Orleans are considerably higher than the rates from Memphis and other points along the Mississippi river to New Orleans by way of the Louisville, New Orleans & Texas Railway, commonly called the Mississippi Valley Railroad.

The words "reasonable" and "just," as used in the statute as applied to rates, are each relative terms. They do not mean to imply that the rates upon every railroad engaged in interstate commerce shall be the same or even about the same. The conditions and circumstances of each road surrounding the traffic, and which enter into and control the nature and character of the service performed by the carrier in the transportation of property, such as the cost of transportation, which involves volume or lightness of traffic, expenses of construction and of operation, competition in some respects of carriers not subject to the law, rates made by shorter and competing lines to the same points of destination, space occupied by freight, value of freight, and risk of carriage to carrier; all have to be considered in determining whether a given rate is "reasonable" and "just."

Tested by these rules, a rate may be a very reasonable and just rate on one railroad and not reasonable and just on another. For example, a rate that would be reasonable and just on the New York Central & Hudson River Railroad may be so low that it would force the Minneapolis & St. Louis Railway into bankruptcy in less than thirty days; and a rate that might be reasonable and just on the Minneapolis & St. Louis Railway might be so high that if attempted to be enforced on the New York Central & Hudson River Railroad for thirty days would practically destroy the business of the latter. This diversity is most observable in the different portions of the country; as, for instance, between lines of railroad in the southern States or the States of the far west, on the one hand, and the railroad lines of the middle and eastern States, on the other. Where, however, railroad lines reach the same common points, are located in the same territory, and compete with each other, as well as with other lines, for the business of that territory, their rates are, in general, much the same, and this is one of the necessities of the situation. Even among the rail carriers where there is no opposing water competition, there may be occasional differences in rates that will be found substantially justified by the different circumstances and conditions under which the lines are operated.

Citations made of previous decisions of the Commission only for the purpose of avoiding a repetition of discussing rules already settled will show that very many of the propositions involved in the main question here raised have heretofore been examined and considered by the Commission.

On the subject of the comparison of rates of one railroad with those of another in the case of the Business Men's Association of the State of Minnesota against the Chicago & North-Western Railway Company, 2 I. C. C. Rep. 83, the Commission said:

"The subject of comparing rates in one portion of the country with rates in another and rates upon one line with rates upon another, operated under substantially different circumstances and conditions, has repeatedly been before us, and we have uniformly held that they do not constitute a fair basis of comparison. (See *Evans & Reed v. The Oregon Railway & Navigation Company*, 1 I. C. C. Rep. 336; *The Business Men's Association of the State of Minnesota v. The Chicago, St. Paul, Minneapolis & Omaha Railway Company*, recently decided; *The La Crosse Manufacturers' and Jobbers' Union v. The Chicago, Milwaukee & St. Paul Railway Company*, 1 I. C. C. Rep. 629.")

The elements that enter into the cotton rates and make them what they are from interior points along the lines of the Illinois Central Railroad Company and the Cincinnati, New Orleans & Texas Pacific Railway Company to New Orleans, on the one hand, and from the same points to northern and eastern mills and markets, on the other, as disclosed by the evidence in this proceeding, may be briefly stated. To New Orleans, these are a comparatively short haul of freight, the necessary use of a large car equipment in rushing this freight to New Orleans during a few months of the year, a large portion of which car equipment, after performing this service, can not be otherwise profitably employed, and at intervals is obliged to return empty to the northern terminals of these railroads for other freight; the difference between the larger volume of the traffic which these railroads transport

into New Orleans and the comparatively much lighter traffic which they transport out of New Orleans, rendering it unavoidably necessary that in the operation of their lines a large portion of their car equipment must go back empty from New Orleans to northern terminals, a distance of between five and six hundred miles; and the further fact that during about six months of the year there is little or none of this freight for the defendant to carry from these interior stations to New Orleans. To northern and eastern mills and markets these elements are a large surplus of north-bound returning empty cars in which the cotton may be hauled over the lines of the Illinois Central Railroad and the Cincinnati, New Orleans & Texas Pacific Railway, that can not be otherwise employed, and which, if not used in this manner, would be, to a large extent, a source of heavy and dead expense to these companies; a joint through rate for this cotton from Cairo and Cincinnati north and east with connecting rail carriers in percentage proportions for a long haul to northern and eastern mills and markets in which there is employment found for a portion of their cars in the prosecution of their business and over lines where freight rates, on account of the volume of the traffic, are much lower upon property generally than in the southern States; a fierce competition with other rail and water lines in many instances contending for the business; and the further fact that it is a kind of business out of which something may in this manner be made by the carriers in the use of their cars and which they do not, therefore, feel at liberty to decline.

Do these elements and considerations justify the difference in these rates?

The difference between a local rate of a railroad on a comparatively short haul, graded at stations, generally, according to distance, and on the other hand, of a joint or through rate upon a long haul, made by percentages charged by a number of connecting lines, was considered by the Commission in the case of *W. B. Farrar & Company against the East Tennessee, Virginia & Georgia Railroad Company*, 1 I. C. C. Rep. 487, and it was there said by the Commission:

“It is a very familiar rule in the transportation of freight by railroads and has become axiomatic that while the aggregate charge is continually increasing the further the freight is carried, yet the rate per ton per mile is constantly growing less all the time. In consequence of the existence of this rule the increase of the aggregate charge continues to be less in proportion every hundred miles after the first, arising out of the character and nature of the service performed and the cost of service; and thus it is that staple commodities and merchandise are enabled to bear the charges of transportation from and to the most distant portions of our country. Examples showing the universality of this rule may be seen in the tariffs of railroad companies generally in the United States, where their length is sufficient to admit of its application. . . . The Act to regulate commerce, so far from throwing hampering restrictions or obstacles in the way of the operation of this salutary rule, gives it all the benefit and aid of its sanction and safeguards by providing that the carrier shall be entitled to receive a reasonable compensation for the service performed, upon open published rates, against which no competitor can take advantage by allowing shippers secret rebates and drawbacks in order to get the business.”

To same effect see Business Men's Association of Minnesota against the Chicago, St. Paul, Minneapolis & Omaha Railway Company, 2 I. C. C. Rep. 67.

In the discussion of through rates in the case of the Milwaukee Chamber of Commerce against the Flint & Pere Marquette Railway Company *et als.*, 2 I. C. C. Rep. 553, the Commission said:

“A rate is none the less a through rate when freight is shipped upon a through bill of lading from the point of origin to destination, accompanied by a way-bill showing the route over which it is to go, with the percentages of all the other lines set forth on the way-bill, because the initial carrier charges its local rate as part of the total rate, and the remaining lines charge an agreed rate made by percentages.

It may occur where the freight is shipped under a through bill of lading from the point of origin to the final destination and has to pass over ten or a dozen different lines of railroad, and several of these, or, for that matter, each of these roads may charge its local rate, and still the total rate is a through rate. As through rates are made by the American system of roads, agreed percentages of the total rate considerably less in amount than the local rates of the respective roads receiving such percentages are usually a leading feature of such through rates, and it is eminently proper as a general rule that this should be so. This rule is illustrated in the percentages received by the defendants and their connecting lines east of Milwaukee of the proportion of 23 cents per hundred pounds of the Minneapolis rate, as well as their percentages of the 25½ cents per hundred pound rate on shipments of freight originating at Milwaukee. But, as we have already stated, it is not necessary that this should be so in order to constitute a through rate.

“Through rates, like any other agreements that parties competent to contract may make, admit of very great variety in the forms they may assume. In one shape or another they are in very general use upon the American roads, and in the case of long hauls are one of the necessities of the situation. Commerce and trade require it and competition compels it. Such rates, when reasonable and fairly adjusted in their relation to local business, are greatly favored in the law because they furnish cheapened rates and greater facilities to the public, while, at the same time, they give increased employment and earnings to a large number of carriers.”

A proportion of a through rate charged by one carrier upon a long haul of the freight, whether it be called an “arbitrary” or a “percentage,” may well be considerably less than a local rate charged by the same carrier for the same distance over its line.

In stating the rules governing through and local rates, in the case of the Business Men’s Association of Minnesota against the Chicago & North-Western Railway Company, 2 I. C. C. Rep. 83, 84, the Commission said:

“We have also had occasion to consider the subject of the rate per ton per mile decreasing for the greater distance, as insisted on here, and we have held, as we have found, that while this is one of the incidents or elements, and, indeed, may be said to be a rule in the case of joint rates on long hauls or through rates on long hauls, unless modified by exceptional conditions of transportation, yet that it can not, as a rule, be considered as a test in railroad operations in the case of local rates. The rates in question are the local rates of the Chicago & North-Western Railway Company at all its stations from Chicago to St. Peter.”

The “arbitrary,” as it is called, of the Illinois Central Railroad Company, being its local rate from interior points to Cairo, is, in most respects, not very considerably different from the rates from these points to New Orleans, according to distance. The proportion of the through rate it receives north of Cairo, while somewhat larger in proportion to the distance than that of the connecting lines with which it prorates, is not greater, in most instances, than is the percentage allowed to the initial line which originates the business. If it should be contended that rates on cotton from the interior stations of the lines of the Southern Division of the Illinois Central Railroad Company to Cairo, and the like rates on the Cincinnati, New Orleans & Texas Pacific Railway to Cincinnati, should be made the same according to distance as from the same points to New Orleans, and this would certainly be the most plausible form in which the complainant’s complaint could be placed, we do not see how this could be done, because the differences now existing between these rates seem to be substantially accounted for in the different circumstances and conditions under which the service is performed.

No through rates on cotton from interior points in Mississippi *via* New Orleans, rail and water, by way of either of defendants’ lines to eastern points have been filed with the Commission. Whether this, in each instance, has been due to the fact that the defendant rail carriers of this class of freight to eastern points could agree among themselves on

through rates, and could not agree on such through rates with the water lines at New Orleans, or whether it has been due to the fact that shippers east of the Mississippi, in many instances, preferred to ship their cotton in this manner to eastern mills, and in some cases to eastern ports for export, or whether it has been due to the fact that this to some extent may have been considered the most direct route for the carriage of freight, all rail, to eastern points, the evidence does not show, except in the case of shippers and business men at Meridian and Greenville, who testified very generally that the shippers in that part of the country preferred to send their cotton all rail to Atlantic ports instead of by New Orleans. Such through tariffs *via* New Orleans, rail and water, have been filed with the Commission by the Southern Pacific Company, which has an associated line of steamships making continuous carriage of cotton on through rates, rail and water, from Texas and Louisiana points to eastern points. The defendants in these cases have no such associated lines of steamers. The Commission, as we have decided, has no authority under the Act to regulate commerce to compel railroad companies to enter into joint arrangements with other carriers, by rail or by water, for through carriage at through rates. The Commission has further decided that the fact that a railroad company makes such joint arrangements for one of its branches does not charge it with unjust discrimination for refusing to make identical arrangements on other parts of its system when it appears that from such other parts of its system it actually makes through arrangements by a more direct route and at the same rates which are presumptive of equal convenience to shippers. (See *In the Matter of Joint Water and Rail Lines*, 2 I. C. C. Rep. 645).

The tariffs of the independent water lines from New Orleans to New York, Boston, and other eastern points on cotton have not been filed with the Commission and there is no requirement of law that they should be. For this reason we are able to know, to some extent, what these rates are, only from other sources, and then not in a manner to make it absolutely conclusive. The evidence in this case tends

strongly to show that, although through rates are not made from interior points in Mississippi *via* New Orleans, rail and water, to New York, Boston, and other eastern points, yet, that upon the combination of the rail rate from these interior points to New Orleans added to the water rate from New Orleans to these eastern points, that by whichever route the cotton goes the rate may be practically much the same either way; and that the rail rates from these interior points to eastern mills and cities are made in competition with the rail rate to New Orleans with the water rate added from New Orleans to such eastern cities and points. The water rate from New Orleans for export and to eastern points by vessels, running independent of and not connected with any rail line by continuous carriage, is a matter of which, of course, the Commission has no jurisdiction. They are carriers who are independent of the statute. Nearly all the cotton carried to New Orleans goes there for export. It is obvious, we think, that the rail carriers, the defendants in this case, have made their rates from the interior points in Mississippi largely to meet this competition of the water lines from New Orleans, coastwise, east, or for export, and that for this traffic there is a fierce competition between these long contending lines of transportation. To obtain it the vessel service may possibly give secret rebates with impunity, while the rail carriers can do nothing of the kind, without incurring the severe penalties of a violated statute. To obtain it, the vessel service is not required to publish any rates and may therefore give secret rates, while the rail carriers are obliged to publish their rates.

While New Orleans, therefore, has the advantage of these water lines with ocean rates combined, it labors under the disadvantage that some of these water lines and the rail carriers having the most direct routes to Atlantic seaports and eastern points, so far as cotton from the interior of Mississippi is concerned, are in direct competition with each other for the carriage of the freights, and although in addition to its other advantages New Orleans has its fine market, its proximity to deep water and to the ocean, yet it is also true

that a large portion of this cotton is carried all rail to Atlantic ports, and thence to eastern cities by lines running east and west, which neither begin nor end at New Orleans, but have their terminal points at Atlantic seaports, on the one hand, and in the far interior, on the other, or still by other carriers, all rail, to eastern mills, markets, and Atlantic ports. We only state what is matter of general knowledge and of which we are bound to take notice when we say that at these interior cities and towns there are agents of American and European spinners bidding for and buying this cotton for Fall River mills and other American mills, for Liverpool, Bremen, Hamburg, Rotterdam, Havre, Barcelona, and other European markets. These buyers, of course, have their voice as to the routes by which this cotton shall be shipped, as well as the carriers who transport it. Under such conditions and circumstances it is absolutely impossible, in the nature of things, for New Orleans to receive all, or practically all, of this cotton. That New Orleans receives so much of it as it does receive, making it the first cotton market in the United States and a port at which more cotton is received than any other, is itself conclusive evidence of its great advantages and of the energy and capacity of its business men.

Now, when a comparison is attempted between the rate per ton per mile on a comparatively short haul from one of these interior points in the State of Mississippi to New Orleans on cotton, as compared with the rate per ton per mile on the long haul from the same interior points to eastern cities and mills, as is done by the complainant in this proceeding, the fact is overlooked that this standard of comparison is one that omits important considerations. Suppose the rate per ton per mile, for instance, from Meridian or Aberdeen, all rail, to Boston points is compared with the rate per ton per mile on cotton carried from Meridian by rail to New Orleans and from New Orleans by water lines to Boston points; then the standard of comparison of the rate per ton per mile, according to distance, would seem to be one that would be more nearly approaching justice and fairness, and in this supposed case it would, perhaps, be

found to be not greatly different by one route from what it is by the other, although, as a matter of fact, perhaps, nothing connected with transportation is better established than that the transportation by the water lines of heavy freight, like cotton, can be made much more cheaply, so far as cost of transportation is involved, than by all-rail lines; and we have several times held that rail carriers may meet the competition of water lines where this is large, active, and of controlling force rather than sustain the loss of going entirely out of the business.

In the case of the New Orleans Cotton Exchange against the Cincinnati, New Orleans & Texas Pacific Railway Company, 2 I. C. C. Rep. 382, 383, the Commission said:

“The sole cause of this falling off in the proportion of the crop annually received at that city (New Orleans), the Cotton Exchange finds in the alleged cotton-rate discriminations made by the defendants against New Orleans, diverting, as is claimed, a part of its cotton business to eastern cities. In urging this view the complainant apparently takes no account of the comparatively recent construction of several all-rail lines of transportation from Meridian and other cotton-shipping points to eastern ports and markets, nor of the construction of railroad lines connecting, through the ports of Virginia, Georgia and the Carolinas, with water lines to such ports and markets or foreign ports. In thus assigning a cause for a change or modification in the direction of cotton traffic and movement no account is taken of extended facilities or improved methods. Through these, cotton is compressed at interior towns, railroad stations, and in transit. When not yet on its way to market the price it is to bring may be made available on through bills of lading, domestic or foreign, at the county town next to the cotton field. Such facilities and accommodations were formerly to be obtained only in New Orleans or some other of the larger cities. That city is not the place of manufacture or ultimate destination of the cotton received. It is carried there for distribution—to be forwarded. Like other business this is largely controlled and directed by economy in time and cost.

Any estimate is faulty which does not include these new conditions among the causes influencing the movements of cotton in the past fifteen years."

These conclusions, as there stated, apply with great force to the main question in the present cases.

And again, in the same case, the Commission said :

"It is as nearly settled as anything relating to railroad charges can be, that under like conditions freight can be profitably carried long distances at rates proportionately lower than short distances. The movement of freight short distances is necessarily by local trains with frequent stops, and is much more expensive than movement by through trains over long lines. There are some items of cost, such as loading and unloading, which are common to long and short hauls, and which make a considerable item in the cost of carrying short distances, but become very slight when apportioned on business over long lines.

"The rule of equal mileage rates asked for would often prevent legitimate competition and frequently give a monopoly in transportation to the best and shortest road. Enforce the equal mileage rate asked for at Shreveport, and not a bale of cotton would pass over the Vicksburg & Shreveport road to New Orleans, for the Texas Pacific, being 81 miles the shorter route, would take the freight. The mileage rate over it would be \$7.48 less on the car-load. Put it in force at Meridian and not a bale of cotton would go east over the defendant roads. The East Tennessee, Virginia & Georgia, being 200 miles the shorter route, would take the freight \$24.24 lower per car-load than its longer rival under the equal mileage rate. In view of such results the equal mileage rate rule insisted upon by complainants must be refused."

According to the rule contended for by the petitioner, namely the distance rate, or rate per ton per mile, as a rule of comparison as to what these relative rates should be, the Cincinnati, New Orleans & Texas Pacific Railway Company could carry no cotton from Meridian except such as it carried

to New Orleans. That carrier would be precluded from availing itself of traffic over its own line and that of its connecting lines *via* Cincinnati to northern and eastern mills and Atlantic ports, and the shippers along its lines would also be precluded from availing themselves of this outlet for their production, no matter how much they might desire to do so. As a consequence, New Orleans would enjoy a monopoly of this business. According to that rule, if any of this cotton went to any Atlantic port at all, or northern or eastern mills, from Meridian, it must go by the East Tennessee, Virginia & Georgia Railway Company *via* Brunswick, Georgia, and would be trivial in amount; and even by this shortest rail route from Meridian to an Atlantic port, according to this rule, that road would be practically out of the business. It is equally true that, according to the same rule contended for by petitioners, the Illinois Central Railroad Company could haul very little of the cotton along its line otherwise than to New Orleans, except from the extreme northern part of the State of Mississippi, and New Orleans would enjoy a monopoly of that business.

Such a result, if accomplished, would materially nullify the usefulness of the markets at interior towns and cities for cotton and of the compresses built at these towns, would deprive the producers of cotton in the interior of the competition afforded by many markets and long contending lines of transportation, and would paralyze to a large extent the usefulness of important rail lines, depriving them of large sources of revenue to which they are fairly entitled.

In view of the competition of the water lines surrounding this traffic on the Mississippi river and its navigable tributaries, and at Gulf and Atlantic ports, together with associated railway lines in some instances, and independent railway lines in others, and the difference between short hauls of the cotton to some of these ports and exceedingly long hauls to others, each in different directions, the observation made by the Commission in the case of the Detroit Board of Trade against The Grand Trunk Railway of Canada and others

(2 I. C. C. Rep. 321), would not seem to be inappropriate: "It is not a service of preference to mere individuals or localities, but it is in a very large part the through carrying trade of the continent." It is the staple product of the country, and has been for a long time. It stands on the same footing as freight with grain and other necessities of life. It seeks the markets and spinners of the world by these various and contending lines of transportation. It is an article of coarse fabric and compact bulk and therefore entitled to a low rate. It is to the interest of the producer, as well as of the consumer, that all these lines should be permitted to participate in the competition for its carriage, thereby increasing its price to the producer and cheapening the cost of carriage, and, at the same time, allow these carriers the benefit that they can respectively reap from its carriage. It is a subject that can be dealt with only upon broad lines, and not from narrow considerations.

It may be true that the all-rail carriers from these local points in Mississippi make their rates on cotton to eastern points in competition with the water lines from New Orleans lower than the water lines do; but this we do not know and cannot know because the tariffs of the water lines are not filed with us, and these water lines can give rebates and preferences to individuals at will, as they may see proper. To meet such conditions of competition it is one of the inevitable consequences of the situation that the rail carriers whose lines extended to Atlantic ports and not to New Orleans, and who desire to participate in this traffic, such as the defendants and the East Tennessee, Virginia & Georgia Railroad Company and others should find it necessary to make their rates on its transportation as low as possible in order to get any share of the business. And on the other hand, it is but natural, and to some extent may be necessary, that railway lines, like the Illinois Central Railroad Company and the Cincinnati, New Orleans & Texas Pacific Railway Company, having no associated line of steamers at New Orleans, like the Southern Pacific Company, may find it necessary to make their proportion of the through rate from local points in

Mississippi to eastern ports and mills as low as possible in order to get as much of the carrying business of this cotton as they respectively can over their lines, and to accommodate shippers and buyers who desire to send their cotton by their routes.

Unless the rail carrier has an associated line of vessels for the continuous carriage of freight to final destination beyond the port of New Orleans, the service of the rail carrier terminates when it has delivered the freight at New Orleans; and if the freight is taken at New Orleans for ocean carriage to final destination by independent vessel carriage, then we have no authority to prevent that vessel, in the shape of a rebate, from refunding to the shipper the cost of compressing the cotton. There seems to be but one instance in which the compress charge on cotton compressed at Meridian or at stations along the line of the Illinois Central Railroad Company is refunded to the shipper, and that is where it is carried to New Orleans for export by one or the other of these rail carriers, and then it is refunded to the shipper by the ship which takes the cotton for a foreign destination.

The method of hauling uncompressed cotton to New Orleans in box cars instead of upon flat cars seems to be one that has its compensating advantages to the producer, as well as to the carrier, inasmuch as it saves the producer charges for storage at New Orleans and the delays of the market, while it protects the carrier against the risk of fire in transit. We are asked to require this carrier to haul uncompressed cotton to New Orleans in flat cars, but for reasons stated we can not do this. This is a matter relating to the physical operation of the road, and we can not require the carrier to enter upon a method of transportation that involves greater risk to it in the carriage of freight, while, at the same time, it imposes upon the shipper expense and delay in preparing his products for market or for further shipment to final destination.

The rate is the same whether the carrier carries the uncompressed cotton in a box car or on a flat car, and as the car-

rier can carry more than twice as much uncompressed cotton on a flat car than in a box car, it is obvious that it would be cheaper to the carrier, if this view of the matter alone were considered, to carry uncompressed cotton on a flat car than in a box car. In addition, however, to the considerations already named, of the risk arising from fire and dampness caused by rain, and delay in consequence thereof, as to uncompressed cotton when carried on a flat car, there is the advantage to the carrier of more return loads in a box car than on a flat car; and this last, in the practical operation of railroads, is a very important feature; for, no matter how able and excellent the management of a line of railroad may be, there will always be a large percentage of returning empty cars on long hauls without loads, and where these can have return loads to any extent, such freight can be moved correspondingly cheaper by the carrier, and is so much made as against a dead loss on hauling the returning cars empty. In either event, however, as the rate is the same whether the uncompressed cotton is hauled in a box car or on a flat car, it does not appear that the petitioner or the city of New Orleans sustains any damage by the carrier adopting one method in preference to the other, especially as it is not shown by the evidence that all the cotton from the cotton-growing region which is transported to New Orleans by these carriers is not carried through with sufficient promptness for the demands of the market and export.

We come now to consider the question made as to the difference between rates on compressed cotton and cotton uncompressed carried by the defendant, the Cincinnati, New Orleans & Texas Pacific Railway Company, from Meridian to New Orleans. It appears that such cotton is not compressed at Meridian to be shipped to New Orleans except chiefly for export, or to a small extent, to eastern mills and Atlantic ports *via* New Orleans; in either event a very long haul. The compressing of cotton is a very important and valuable feature of its transportation, especially for long hauls, both to the shipper and the carrier, and as to such long hauls, upon anything like rates that will carry the cot-

ton to far distant markets, it is indispensably necessary. Neither the foreign ship nor the coastwise steamer will receive cotton for carriage unless it is compressed. Nor can the rail carrier transport cotton to far distant markets or ports upon any schedule of rates which the shipper could afford to pay, unless it is compressed at the point of origin of the freight or in transit. It is therefore a necessary preparation of cotton for a long haul. When thus prepared the carrier may justly and reasonably make a considerably lower rate on compressed than on uncompressed cotton. Experience has shown that some general rule applicable to what should be the difference between the rate on compressed and uncompressed cotton should be announced. We have been appealed to by the parties to these proceedings to declare what such rule should be, and the facts seem to call for an expression of our views on this subject. The conclusion we have reached is that the rail carriers engaged in interstate carriage of cotton can, for the present, find no better or fairer rule than that the difference in the rate between compressed and uncompressed cotton should be the actual and necessary cost of compression. This rule gives the shipper the benefit of the lower rate to the exact extent of the expense he has incurred in the necessary packing of his freight by a compress for the long haul, and to the carrier it gives the benefit of the additional space in the cars on freight thus prepared. The difference in the rate upon the two classes of freight, compressed and uncompressed, is in this way, in substance, reasonably and justly accounted for in the difference in the rate charged each respectively.

Some expenses, like those of drayage, storage, and in case of sales, sampling and commissions, are unavoidable at a great market and port like that of New Orleans, and while there is evidence that these are much objected to by shippers at Meridian and Greenville, we have not found it necessary in the conclusions we have reached which dispose of these proceedings, to pass upon the reasonableness of these expenses and charges at New Orleans.

Having disposed of the other and more general questions

involved in these cases, there yet remains to be considered one other, and that is, whether these rates are relatively reasonable and just from points in the States of Mississippi and Tennessee to New Orleans.

As we have already stated, they are in substance much the same as those charged by railroads generally in the southern States for similar services. That they are considerably higher than the rates in the States north of the Potomac and Ohio rivers and east of the Mississippi river, is undoubtedly true. But the causes of this have several times been referred to by the Commission, and latterly in its Third Annual Report, page 46. As to the effect of water competition on rates in the southern States, see First Annual Report of the Interstate Commerce Commission, pp. 16, 41. We find that, under all the circumstances and conditions surrounding the traffic in the case of the Illinois Central Railroad Company and the Cincinnati, New Orleans & Texas Pacific Railway Company, these rates are in substance relatively reasonable and just, with a few exceptions hereinafter named at certain points on the lines of the railroads where there is no competition by water carriers. In these instances there are relative differences in cotton rates, which we do not think ought to exist and which go also to their reasonableness. For example: The rate on a bale of compressed cotton from Jackson, Mississippi, to New Orleans, by the Illinois Central Railroad Company, a distance of 183 miles, is \$2.00 per bale, while from Meridian to New Orleans, a distance of 196 miles, the rate on a compressed bale of cotton is \$1.50. Again, the rate on an uncompressed bale of cotton from Jackson, Mississippi, to New Orleans, on the Illinois Central Railroad, is \$2.25, while from Meridian to New Orleans, on the Cincinnati, New Orleans & Texas Pacific Railway, the rate on an uncompressed bale of cotton is \$2.15. Upon the evidence at that time before us in the case of the New Orleans Cotton Exchange against the Cincinnati, New Orleans & Texas Pacific Railway Company (see 2 I. C. C. Rep. 375), which really only involved the local rate on cotton from Meridian to New Orleans, we decided that this local rate on uncom-

pressed cotton should be reduced by this company from \$2 per bale to \$1.50 per bale, leaving it to adjust its uncompressed rate to the compressed rate then ordered. Thereupon the Cincinnati, New Orleans & Texas Pacific Railway Company immediately put into effect a rate of \$1.50 per bale on compressed cotton from Meridian to New Orleans, and at the same time reduced its rate from \$2.25 per bale on uncompressed cotton between the same points to \$2.15 per bale.

The entire subject of all these respective rates is now before us, and after the best and most careful examination we have been able to give the subject, we find as a material fact in these cases, and so decide, that the rates on compressed cotton from Jackson, Mississippi, and Meridian, Mississippi, to New Orleans, should be the same; and that the rates on uncompressed cotton from Jackson, Mississippi, and Meridian, Mississippi, to New Orleans should be the same. This, we think, is obviously true and that they need to be adjusted upon a basis somewhat different from that which now exists. We find as a matter of fact, and so decide, that the rate on a bale of compressed cotton from Meridian to New Orleans, at present, when carried over the line of the Cincinnati, New Orleans & Texas Pacific Railway Company, may be as much as \$1.65 per bale, and not more, and that such rate is a reasonable and just rate. We further find, and so decide, that a rate of as much as \$2.15 a bale on uncompressed cotton from Meridian to New Orleans carried over the line of the Cincinnati, New Orleans & Texas Pacific Railway Company, and not more, is a reasonable and just rate for that service. We further find, and so decide, that a rate of as much as \$1.65 per bale on compressed cotton from Jackson, Mississippi, to New Orleans, carried over the line of the Illinois Central Railroad Company, and not more, is a reasonable and just rate for that service. We also find, and so decide, that a rate of as much as \$2.15 per bale on uncompressed cotton from Jackson, Mississippi, to New Orleans, carried over the line of the Illinois Central Railroad Company, and not more, is a reasonable and just rate for that service. In thus making these adjustments we have been influenced by

what we find to be their relative reasonableness and all the circumstances and conditions connected with and surrounding the traffic as well as the service performed in each instance. We find, and so decide, that at river points along the line of the Illinois Central Railroad Company, such as Memphis and Yazoo City, where it is compelled to meet the competition of steamboats on navigable rivers at such points last named, it may make such reasonable and just rates as will enable it to compete with such water carriers for the business of carrying cotton from these points to New Orleans or to eastern mills and seaboard points.

The relative rates on cotton at other stations on the main line of the Illinois Central Railroad Company and its branches are referred to in the petition and have received the consideration of the Commission. Aberdeen is situated on the Canton, Aberdeen & Nashville railroad, which is a short branch road 108 miles in length, and during the year 1888 its total earnings were only \$108,110.12, while its operating expenses during the same year were \$118,354.64, leaving a deficit of \$10,244.52. Parsons is a station on the Yazoo & Mississippi Valley Railroad, also a short road of the Illinois Central system, which, including the Lexington branch, is only 140 miles in length. The total earnings of this road during the year 1888 were \$186,606.13, while during the same period its operating expenses and taxes were \$199,311.23, leaving a deficit of \$12,705.10. No doubt the main line was to some extent benefited by the traffic from the branches, but still, taking into consideration all the circumstances and conditions surrounding the traffic and the rates charged, we find these rates to be relatively reasonable and just. At Durant, a station on the main line of the Illinois Central Railroad, 241 miles from New Orleans, and Vaiden, a station on the main line 261 miles from New Orleans, we find the rates to be relatively reasonable and just. A statement of the rates from these points, with the distances, is shown in a table in the preceding part of this opinion and report.

No better practical proof could exist of the fact that all

these rates are relatively reasonable and just, so far as New Orleans is concerned, than is the result that the bulk of the cotton on the line of the Illinois Central Railroad generally, as well as near to Memphis, is carried to New Orleans upon a long haul, while very little of it is carried to Memphis by this carrier upon a short haul, and the proportion of it carried by the Illinois Central Railroad to Memphis and all the northern and eastern mills is very small compared with what it carries to New Orleans. It is obvious that New Orleans, owing to the advantages of its position, enjoys in a general way the benefit of these rates to an extent that Memphis and northern and eastern mills can not, in receipts of cotton, although over the line of this carrier rates are made substantially the same on north-bound as upon south-bound shipments of cotton between New Orleans and Cairo. It would make this report and opinion, already unavoidably lengthy, unnecessarily long, to take up each of these numerous stations and show that this is true, as could easily be done. The transportation embarrassments that environ this carrier at many junction points along its line, occasioned by the near competition of the Mississippi river in conjunction with rail east and west lines, are serious indeed. It has already, according to the evidence, practically been driven out of the cotton-carrying business from Memphis by the competition of the Mississippi river and of the Mississippi Valley Railroad Company to New Orleans.

Now, this method of rate-making, necessary as it is to the business of this carrier, especially at junction points, in order to enable it to participate in the traffic along its line against the competition of the water and rail carriers, operating in effect in conjunction with each other upon east and west-bound rail lines crossing its line, might, as a mere question of the relative reasonableness of rates as between points on its line such as Cairo and New Orleans, be the subject of complaint that this was done in favor of New Orleans, if this carrier did not meet this phase of the subject by making the same relative rates, substantially, on north-bound as well as south-bound cotton transported over its

line. But this it has done. This is apparent from the first and second tables in this report and opinion when the one is applied to the other. As, however, Cairo is not a cotton market while New Orleans is, under this system of rate-making New Orleans has practically received the bulk of the cotton along the line of this carrier, getting twice and one-half as much as has gone to Cairo, Memphis, and all other points. One test of a rate that can never be ignored is its actual and practical effect.

The Illinois Central Railroad Company and the Cincinnati, New Orleans & Texas Pacific Railway Company will be allowed until the first day of June, 1890, to comply with the order made in these proceedings relative to adjusting their respective rates at Jackson, Mississippi, and Meridian, Mississippi.

An order will be entered in conformity with the facts found and conclusions reached in this report and opinion.

At the hearing and decision of this case the Chairman was absent because of illness, and did not in any way participate.

**THE WORCESTER EXCURSION CAR COMPANY v.
THE PENNSYLVANIA RAILROAD COMPANY.**

Complaint filed April 3, 1888. Answer filed April 24, 1888. Heard June 19, 1888. Briefs filed on behalf of Parties July 16—October 8, 1888. Brief filed for Pullman's Palace Car Company, October 15, 1888. Decided April 23, 1890.

1. Where a railroad company has by an arrangement with one car company procured a sufficient supply of sleeping and excursion cars for all the business of its lines, and refuses to haul excursion cars of other private car companies over its track for this reason, it can not be forced to do so against this objection.
2. Unless the contrary is imposed as conditions in the grant of its charter, the right to construct and operate a railroad is a franchise in its nature exclusive, not held in common with the public, though the grant of the franchise is for the public use; and the tracks of a railroad are not a common highway upon which any one can enter and use his own cars for transportation purposes against the objection of the company owning the tracks.
3. The extraordinary liability imposed by law upon a railroad company as a common carrier for the sufficiency and safety of its passenger cars and the competency of its employees in operating such cars is a highly important protection to the public, but such company might very reasonably claim that it was not responsible for a passenger car of a private car company, or the consequences of that passenger car being transported as part of its train in causing a wreck, collision, or delay, when it had no volition in accepting or rejecting such car, but was forced to transport it by order of a civil tribunal.
4. A railroad company may acquire cars by construction, by purchase, or by contract for their use, and no one has the power to compel a railroad company to select among these several modes or to contract with all comers.
5. The interest of the public in a matter of this kind is vitally important, and lies in the direction of holding every common carrier by rail to the strictest responsibility in furnishing safe, suitable and sufficient car equipment for the transportation of persons over its line; and the law-making power in enacting the Act to regulate commerce has not undertaken to divide this responsibility with the carrier in the selection of its cars.
6. It would be directly at war with the rights and safety of the traveling public, as well as of the railroad company, if the line of the carrier

should become an arena over which it should be compelled to make a contract of some sort with every car company or inventor of cars, and transport the public in trains of which such cars were part.

Rice, King & Rice, for complainant.

James A. Logan, for defendant.

William Burry, for Pullman's Palace Car Company.

REPORT AND OPINION OF THE COMMISSION.

BRAGG, Commissioner:

The complainant in this proceeding is a corporation, organized under the laws of the State of Massachusetts, for the purpose of building, constructing, furnishing, and keeping in repair cars to be run upon railroads for the use of pleasure and hunting parties and excursions. The cars it manufactures and uses for this purpose have a general resemblance to the sleeping cars in use throughout the country. Its custom is to rent the cars to parties on terms agreed upon between the complainant and the parties hiring them, and they are then drawn over the various railways of the country. From the evidence it appears that there are several car companies in the country which do a like business, and among them are the leading sleeping car companies, the Pullman and the Wagner.

The defendant refuses to receive the cars of the complainant and draw them over its lines, in that respect differing from some of the railroad companies, and perhaps a majority. It makes three objections to doing so. The first of these is that it has a contract with the Pullman Palace Car Company, whereby it obligates itself to draw for the general use and convenience of the traveling public the sleeping cars of that company exclusively, and also its cars which are hired out for excursions, as are those of the complainant. The second objection is that the cars of complainant are in some important particulars so different from any others that it draws upon its roads, that when anything is out of order with them the difficulty of repairing is very serious and may cause delay or the leaving of the car at the place where it

thus gets out of repair, and the entailing upon the defendant of a large outlay in the way of machinery, appliances and materials at different points on its line for the purpose of keeping these cars in repair, when there are but few of them, in consequence of which the defendant can not possibly be remunerated for any such outlay of expense. The third objection is that the cars offered by complainant to be transported were in fact out of repair.

We consider these different objections somewhat in their inverse order for the purposes of this report and opinion. As to the third objection made by the defendant, considerable evidence was given at the hearing, but in so far as it tended to show that the cars offered for transportation were not in proper condition, the proofs were conflicting. The question, however, whether defendant was or was not justified in its refusal in a particular instance is not so important. It is the right to refuse in all cases, regardless of the condition of the cars, that is the main point in issue. The defendant says that it is accustomed to keep on hand at convenient stations on its lines the several parts of the Pullman car which are liable to be broken or get out of repair, so that breakage or other injury can be easily and without delay remedied. The corresponding parts of the complainant's cars are not identical with them; and, as defendant can not be expected to keep on hand the various parts of the excursion cars, not often used in running on its road, it is claimed that it would be unreasonable and unjust to require it to receive such cars, in view of the embarrassment and delay that might follow an injury. To this it is replied that the difficulty suggested is one that is constantly liable to arise when cars of any kind are received by a railroad company which differ from those which constitute its ordinary equipment. As, for example, in the case of refrigerator cars, special stock cars, or tank cars, as well as excursion cars; and that when the cars, which are liable to the accidents and delays suggested are merely drawn for the owner, upon whom, and not upon the railroad company, rests the responsibility for their being kept in condition for use, the embarrassment to the railroad company in

consequence of any breakage or injury could hardly be very considerable. And it is further suggested as an answer to this objection, that when a car becomes unfit to run, the railroad company would, of course, be relieved from any responsibility to run it, and might justifiably side-track it wherever convenient until it was repaired by the owner.

It is contended, also, that the accommodation of parties by the drawing of these excursion cars is something standing altogether apart from the furnishing of sleeping-car conveniences for the general public, and that no reasons exist why, in the public interest, the railroad company should decline to receive and transport the excursion cars offered to it by any one. It is further insisted that in the nature of things there are no impediments to a railroad company establishing general rules under which such excursion cars may be received indiscriminately—rules which in their operation would fully compensate the company for its service, and at the same time be equally fair to the owner of the cars, and in no way restrictive of the general public convenience.

It is likewise insisted that a carrier has not the right to give a single owner of excursion cars a monopoly of the business, but is bound to receive excursion cars when offered by any one to be transported over its line. The provision of the statute relied upon to support complainant's contention is the third section of the Act to regulate commerce, which declares: "That it shall be unlawful for any common carrier subject to the provisions of this Act to make or give any undue or unreasonable preference or advantage to any particular person, company, firm, corporation or locality or any particular description of traffic in any respect whatsoever, or to subject any particular person, company, firm, corporation or locality, or any particular description of traffic to any undue or unreasonable prejudice or disadvantage whatsoever." It is claimed for the complainant that as defendant draws the excursion cars for the Pullman Company and refuses to draw like cars for complainant, that this is giving to the Pullman Company a monopoly of the business and an undue and unreasonable preference and advantage over com-

plainant; and that in the refusal of defendant to receive and transport the cars of complainant, the complainant is thereby subjected to an undue and unreasonable prejudice and disadvantage; and that in each of these respects the statute is violated, and that under section thirteen the complainant is entitled to the relief prayed for.

The conclusions we have reached in this proceeding are adverse to the claim made by petitioner, and we now proceed to state them and the grounds upon which they rest.

The right to construct and operate a railroad is a franchise and in its nature exclusive. It is not held in common with the public, though the grant of the franchise is for the public use. The right of the public is to be transported safely, properly, and without partiality, and in like manner to have freight transported. Conditions may undoubtedly be imposed upon the grant of a franchise in the discretion of the legislature, and Congress may regulate interstate commerce as it may deem best. But there has been no legislation giving private cars the right to use railroad tracks against the objection of the companies owning these tracks. The tracks of a railroad company are not, therefore, a common highway upon which any one can enter and use his own vehicle of transportation against the objection of the company. A railroad is the property of the corporation, to be operated by it under such rules as the law has provided in the service of the public. The corporation must equip it with cars and engines and competent men to operate them, and no one else has authority to put cars or engines upon its track without its consent, nor to demand a joint use and control of the franchise in any respect.

Primarily the line of the railroad is constructed for the transportation of its own cars, but if the diversities and peculiarities of the traffic are such that it is not always practicable for the carrier to supply all of its rolling stock from cars owned by it and it is necessary to obtain some portion of it from others, then the carrier at its peril must see to it that the rates charged are no higher on cars owned by it than

they are on the cars it has obtained from others. As to freight traffic this is the rule indicated in the case of *Rice v. The Louisville & Nashville Railroad Company and others* (1 I. C. C. Rep. 503, 504); and also in the case of *Scofield and others v. The Lake Shore & Michigan Southern Railway Company* (2 I. C. C. Rep. 90, 91).

But even in the case of freight cars the Commission has decided that the manufacturer and owner of a patent stock car designed for the transportation of cattle and other live stock in a less cruel way than they are now transported, and with less loss from shrinkage, did not have the right to demand that a rail carrier should transport his private stock car over its lines against its objection. In that case, which was the *Burton Stock Car Company v. The Chicago, Burlington & Quincy Railroad Company and others* (1 I. C. C. Rep. 140), the Commission said:

"The Burton Stock Car Company does not receive and use the cars belonging to other carriers, and there is no possible mutuality in this respect, such as exists between carriers exchanging cars in the ordinary way. The Burton Stock Car Company is in no sense a 'connecting line,' entitled to equal facilities for interchange of traffic under the provisions of the second paragraph of section three of the Act to regulate commerce. Its counsel insists that it is not a common carrier. When freight is tendered to defendants in loaded cars by other carriers they have the option to take the car or to re-load the freight into their own cars, and the latter course is often pursued when the cost of unloading is less than the car service for the proposed trip. The fact that carriers interchange cars with one another in the manner and on the terms above stated does not entitle the complainant to claim that it is unjustly discriminated against by a refusal to pay it the same rate which carriers adopt as the basis in adjusting their car-service accounts with each other."

The liability of railroad companies as common carriers for the sufficiency and safety of the vehicles they use, as well as the competency of their employees, is a highly important

protection to the public. To what extent this liability might be impaired by compelling a company to take into its passenger trains, against its objection, passenger cars of private companies or individuals, is a most important question. If it does so voluntarily it is responsible to the public for the condition of the cars and consequences arising from collisions and wrecks as well as long delays. But a company might reasonably claim that it is not responsible for a passenger car when it has no volition in accepting or using it.

In a matter of this kind there is a great deal more involved than the mere hauling of a car. Its adaptability to a train and the effect it may have on the movement of a train are important. The testimony in this case shows that embarrassments and delays have happened to the defendant from the use of petitioner's cars. The car couplers and platforms differ from those used by the defendant. The rear part of the car of petitioner is more heavily loaded with coal, ice, and other supplies than are other cars in defendant's train, causing such car to sink down considerably lower at the rear end. Provision is not made by petitioner at convenient points on defendant's lines for the necessary repairs to its cars, as is done by the Pullman Company, and in consequence longer delays occur in repairing them and greater risk of accidents exists. The feature of coupling alone, and of the adaptability of petitioner's car to the defendant's trains, together with the other elements of its construction to which we have referred, are of vital importance in operating trains over defendant's line, with its heavy grades and sharp curves, in crossing the Allegheny mountains, and might naturally at such points as well as others increase the danger of accidents.

According to the evidence, about four hundred trains per day are moved into and out of defendant's station at Broad street, Philadelphia. To accommodate its freight business the defendant is obliged to operate large numbers of freight trains over its road on close time connections. To accommodate the public, passenger trains are run at high rates of speed on defendant's road; they follow each other

closely; prompt schedule time is sought to be made and is important; cars of the most careful and complete construction and adaptation to others in the same train are used, both for safety and celerity of movement. The traveling public are quite as much interested in these matters as the carriers. In view of all these considerations, the power of a tribunal like the Interstate Commerce Commission to interfere with the physical operation of a railroad like that of the defendant, and to require it to haul private cars in its passenger trains, to which it objects, and that might be prejudicial to the carrier and dangerous to its passengers, is one that in its very nature is so extraordinary that its existence would have to be found in the statute, or else it does not exist. Where is the line to be drawn? If the Worcester Company can compel the defendant to accept its cars and haul them, there would seem to be no limit as to the number of cars, or the number of private companies, or individuals, that might enforce the same right.

The language of section 3 of the Act to regulate commerce is, in some respects, broad, and is relied upon to sustain the conclusion that it is the duty of the carrier to transport the excursion cars of the complainant. But that section evidently applies to cases and subjects altogether different from the question involved in this proceeding. The statute has not relieved railroad companies from the duty of providing their own equipment, nor changed the method of providing it. They may do it by construction, by purchase, or by contract for their use. But no one has a right to compel a railroad company to select among these modes, or to contract with all comers. How cars shall be provided is entirely matter of private contract. And whether private cars of companies or persons shall be hauled is matter of discretion and private agreement.

The fact that a railroad company may arrange for the use of excursion cars of one private car company instead of another does not affect the question. It has the right to supply its own road in that manner with vehicles suited to its business and to its line, and by voluntarily using them

they become the same as its own for the purposes of carriage. Every company judges for itself what style of car it desires for its passengers, and its reasons are unimportant so long as its patrons are properly served, nor is it material how the cars are procured. Whatever discretion of preference a carrier may exercise in the choice of passenger cars in its business is outside of the statute and only an exercise of legitimate authority. It relates to the physical operation of the road, for which the carrier is responsible to the public and to the law.

Upon the subject of a legal tribunal, or even a legislative body, interfering with the physical operation and management of a railroad, the report of a Royal Commission in Great Britain, appointed in 1874, shows how the subject is regarded in that enlightened country. In their report to Parliament, presented in 1877, they say:

“Large as are the powers now possessed by the board of trade and the railway commission in respect of railways, they are so adjusted and so limited as to leave with the companies the undivided responsibility of working their lines. The first and most important question, therefore, which we have had to consider, as affecting the entire character of our report, is whether an investigation leads us to advise a departure from this policy, which has heretofore characterized railway legislation; . . . but upon full consideration we are not prepared to recommend any legislation authorizing such an interference with railways as would impair in any way the responsibility of the companies for injury or loss of life caused by accident on their lines. To impose on any public department the duty and to intrust it with the necessary powers to exercise a general control over the practical administration of railways would not, in our opinion, be either prudent or desirable. A government authority placed in such a position would be exposed to the danger either of appearing indirectly to guaranty works, appliances, and arrangements which might practically prove faulty or insufficient, or else of interfering with railway management to an extent which would soon alienate from it public sympathy and confidence,

and thus destroy its moral influence, and with it its capacity for usefulness."

There is nothing in the Act to regulate commerce that indicates a different view on this subject so far as the mere physical operation of railroads is concerned in the carriage of passengers. That there must be no unjust discrimination, or unlawful preference, or undue prejudice or advantage, or disadvantage or extortion, is all true. But these cover a very different field from the power and duty of the carrier to legitimately exercise the authority of selecting cars of its own choice for the transportation of passengers over its line.

For the convenience of commerce, as a rule, carriers, to avoid breaking of bulk and as a method of business among themselves, adopted the rule of receiving and transporting freight cars of connecting lines under reciprocal arrangements, which went to the extent of the interchange of freight cars on agreements for allowance of car mileage. This was adverted to in the case of *The Burton Stock Car Company v. The Chicago, Burlington & Quincy Railroad Company et al.*, 1 I. C. C. Rep. 140, and the Commission there said:

"As is well known, freight cars belonging to the different railroad companies throughout the land are, to a large extent, used interchangeably. A record of their mileage when away from home is made the basis of the payment of 'car service' at the rate of three-fourths of a cent per mile. Of course, if the cars of a carrier are used as much away from home as it uses the cars of other roads on its line, the monthly payments for car service will be offset by the amounts received. This is theoretically the nature of the transaction—a matter of mutual convenience which costs neither party anything. The payments and receipts in any one month could not be expected to exactly balance, but if each road has cars sufficient for its use, the result in the long run will be very nearly equalized. In view of this fact, it is obvious that no great importance attends the making this payment an exact compensation for the use of the cars, and it would not be fair to make it the measure of payment required to be made for the use of cars hired from other persons."

The practice of carriers receiving and transporting freight cars of connecting lines under reciprocal arrangements which went to the extent of the interchange of freight cars on agreements for the allowance of mileage was followed by another practice among them of receiving and returning over their lines special freight cars, such as refrigerator cars and tank cars, owned in most instances by private car companies or shippers, at agreed rates and on certain allowances for the use of these special cars. But in these instances the cars thus transported by the carrier related exclusively to the transportation of freight, and for all the purposes of rates charged, liabilities incurred, and services performed were made by the carrier its own cars for the purposes of such service, rates, and journey. Under the rules settled by the Commission in the two cases of *Rice* and *Scofield*, *supra*, there is no question whatever of the existence of the power to regulate the rates and methods of the carrier in these cases. It is wholly immaterial to that regulation whether the cars used by the carrier are owned by it or whether the carrier obtains them from others, for the rates must be the same and all shippers must be treated alike in furnishing sufficient cars and facilities by the carrier for the freight. These rules recognize that for all the purposes of such service, the cars, no matter whether owned by the carrier or obtained by it from others for the carriage of freight, are for all the purposes of regulation, the cars of the carrier in the performance of service over its line. They admit without friction of the same general application to every kind of freight car.

But, as a matter of practice or usage, rail carriers have never interchanged passenger cars loaded with passengers as they do freight cars loaded with freight; and though in some instances contracts are entered into between roads forming a through line for moving cars from one end of the line to the other, yet this stands upon an entirely different principle. While there may be, and doubtless are, many reasons for the practice and usage of railway carriers, as a rule, of not interchanging passenger cars loaded with passengers, as they do freight cars loaded with freight, one sufficient reason would

seem to be that, in case of collisions, or wrecks, the danger and liabilities arising in carrying passengers are far greater than in the carriage of freight and are altogether different. And in performing so extraordinary, and to some extent, hazardous service as that of transporting passengers over its lines, the carrier may well say that it will do so only in its own cars, or cars which it has made its own by selecting them for that purpose.

The question is pertinent: What interest has the public in the fact as to whether passenger cars belong to the carrier as absolute owner, or whether the carrier has obtained them from one car company or another? The only features of every such transaction that the public are interested in, are whether the cars are safe, comfortable, furnished at reasonable rates alike to all, and without any element of unjust discrimination. The law-making power has not undertaken to divide responsibility with the carrier in the selection of cars, nor has it clothed any civil tribunal with any such power. The responsibility of selecting safe, suitable, and sufficient car equipment for the transportation of passengers over its line is left by law with the carrier; and in the performance of this duty the carrier has rights and grave responsibilities resting upon it. Whether seated in a Pullman car or a Worcester car, passengers traveling over defendant's line would be the passengers of the defendant, and it would be entitled to receive and collect their train fare and responsible for their safe carriage; and as part of the transaction the defendant would have to pay to the company owning the car a reasonable rental for its use during the journey.

It is unnecessary for the purposes of this discussion to consider the case of contracts or arrangements for the transportation of sleeping cars over its line made by the carrier with the owner of sleeping cars, because it seems to be settled that, under the principles laid down in the Express Cases, 117 U. S. Supreme Court Reports, this is a service for the proper and best performance of which a carrier might well make a separate arrangement with a car company to furnish sleeping

cars. At the same time, for the ordinary and usual purposes of transportation, practically speaking, what substantial difference is there between a sleeping car and an excursion car? In their essential attributes each is substantially much the same. Though in some respects differently constructed, an excursion car is a sleeping car, and it would be a difficult task to assign any reasons that would make the transportation of one a service that might be best performed by one of these different kinds of cars, furnished by a car company, selected and designated by the carrier for that purpose, as indicated in the Express Cases, *supra*, that would not seem to apply equally to the other.

It appears that, by a contract, the defendant made an agreement with the Pullman Palace Car Company by which the latter furnished to defendant, upon terms named, sleeping and excursion cars to be transported over the lines of the defendant. We refer to this contract simply because it has been filed in evidence as showing that the defendant has made an arrangement for a sufficient supply of these cars, and not because we attach the slightest importance to its terms in the conclusions we have reached. As the Worcester Car Company has made no provision for the repair of its cars along defendant's lines, providing materials, machinery, and skilled men to repair them, but has left this duty to be performed by the defendant, and as the evidence shows that the parts of the Worcester Company's cars are not interchangeable with those of the Pullman Company, and that in consequence of this the defendant itself would have to provide materials and machinery for the repair of the Worcester cars, only few in number such as complainant is shown to possess, it is manifest that this might entail upon the defendant an outlay of expense far beyond any remuneration it would probably receive from transporting the excursion cars of the complainant. There is no claim or pretense that the arrangements of the defendant are not ample and sufficient for furnishing sleeping and excursion cars for all parties desiring them over its line.

The loss or inconvenience occasioned to a carrier by an

excursion car becoming unable to run on its line is not necessarily trivial for the reason that it can be switched off on a side track. At the point where it becomes unable to run along the carrier's line there may be no side track for many miles distant, and it might be necessary to delay the train many hours to repair such crippled car before it could be removed to such side track; or it might be so crippled that it would have to be taken out of the train and off of the track, involving great delay to the train and unusual expense to the carrier; or the condition of such excursion car might be such as to cause serious accident to the whole train of which it was a part; and it might occasionally and, indeed, often occur that the extent of the damage might be such that the owners or charterers of the excursion car would be unable to make good to the carrier the damages sustained by the latter, if this damaged car should be the means of wrecking a train, causing death and injury to passengers.

The interest of the public in a matter of this kind is vitally important and lies in the direction of holding every carrier to the strictest responsibility in furnishing safe, suitable and sufficient car equipment for the transportation of persons over its line. Perhaps nothing that could occur in railroad management would be more directly at war with the rights and safety of the traveling public than that the line of a railroad carrier should become an arena over which it should be compelled to make a contract of some sort with every car company or inventor of cars, and transport the public in such cars, in order that these car companies and inventors may carry on their strifes of competitive experiments in their business. A result of that kind would take away from the traveling public to a large extent the safeguards which require the carrier upon its own responsibility to furnish safe, suitable and sufficient car equipment for the transportation of persons over its line; and to operate its line with expedition, regularity and safety. That it would, on the other hand, place the carrier largely at the mercy of the car companies, builders, and inventors, none of whom are common carriers, is too true to admit of question. In saying

what we have here, as well as in other parts of this report and opinion, we do not mean to cast the slightest imputation upon the cars of the Worcester Excursion Car Company, or upon their construction, or their safety, or comfort, or traveling qualities. It is the principles involved that we are discussing.

We confine this decision to the particular case before us—that is, where a carrier has made an arrangement with a car company to furnish excursion cars for transportation over its lines by which a sufficiency of excursion cars of a safe, comfortable and suitable character are supplied for that purpose, whether the carrier can be compelled to transport excursion cars of another car company over its lines and in its trains against its objection; and tested by the rules, and for the reasons we have stated, we are of opinion that in such a case this can not be done.

The order of the Commission is that the petition in this proceeding be and the same is hereby dismissed.

**BENNET D. MATTINGLY v. THE PENNSYLVANIA
COMPANY.**

Complaint filed August 1, 1889. Answer filed September 17, 1889.
Heard at Indianapolis, Ind., September 17, 1889. Brief for complainant filed September 26, 1889. Brief for defendant filed November 18, 1889. Decision filed April 25, 1890.

The provisions of the Act to regulate commerce, construed in the light of the principles that apply to interstate commerce as enunciated by the courts of the United States, must be understood as intended to regulate all the commerce subject to the exclusive jurisdiction of Congress, including the agents and instrumentalities employed and the commodities carried, with only the limitations found in the Act itself.

The proviso in the first section that the provisions of the Act shall not apply to the transportation of passengers or property, as to the receiving, delivery, storage or handling of property, wholly within one State, and not shipped to or from a foreign country from or to any State or Territory as aforesaid, that is, by continuous carriage or shipment, only excludes from regulation the purely internal commerce of a State, that which is confined within its limits, which originates and ends in the same State.

When a State carrier engages in interstate commerce it becomes a national instrumentality for the purposes of such commerce, and is subject to regulations prescribed by the national authority. It can not limit its obligations in that business, but must serve the business offered impartially and without preference or discrimination.

The national regulations prescribed are not in all respects co-extensive with the power of Congress, and do not provide for ordering through routes and through rates. While it is the duty of a State carrier which engages in interstate commerce to forward traffic offered from a connecting line, there is no authority under the present Act to compel the carrier to forward the traffic over a route not operated or selected by itself.

E. F. Trabue, for complainant.

Charles H. Gibson, for defendant.

REPORT AND OPINION OF THE COMMISSION.

SCHOONMAKER, *Commissioner*:

The complaint is, in substance, of an alleged wrongful refusal on the part of the respondent company to transfer freight cars over its own tracks in the city of New Albany, Indiana, from the terminus of the Louisville, Evansville & St. Louis Consolidated Railroad to the tracks of the Louisville, New Albany & Chicago Railway Company, to be hauled by that company over the Kentucky and Indiana bridge into Kentucky.

The complaint sets forth that the petitioner is a distiller, and operates his distillery near the city of Louisville, in Kentucky, and that for the purpose of receiving and forwarding freight to and from the distillery the owners have constructed at their own expense and own a railroad track from the distillery to railroad tracks of the Kentucky & Indiana Bridge Company, about one mile and a quarter long, and that he has no other connection with any railroad except over the switch and connecting tracks of the bridge company; that the Kentucky & Indiana Bridge Company owns a bridge across the Ohio river between New Albany, Ind., and the western part of the city of Louisville, together with about ten miles of railroad track, connecting with various depots and railways in the city of Louisville; that the bridge is used in connection with the railroads on both sides of the Ohio river in the business of interstate commerce; that the respondent is the lessee of the Jeffersonville, Madison & Indianapolis Railroad, which it operates, including a branch road running from Jeffersonville, Ind., into New Albany, in the same State, connecting at State street with the Louisville, Evansville & St. Louis Consolidated Railroad Company; that the latter company operates a line of railway westward through the southern parts of Indiana and Illinois and connecting with other railroads in that region; that along the road operated by the respondent a connection is made at Vincennes street, in the city of New Albany, with the Louisville, New Albany & Chicago Railway, a company owning and operating a railroad from New Albany, Ind., to

Chicago, Ill.; that the tracks of the Kentucky & Indiana Bridge Company in New Albany cross the tracks of the Jeffersonville, Madison & Indianapolis Railroad and connect with the tracks of the Louisville, New Albany & Chicago Railway; that the only connection between the Louisville, Evansville & St. Louis Consolidated Railroad Company and the Louisville, New Albany & Chicago Railway Company is made through the city of New Albany over the tracks of the Jeffersonville, Madison & Indianapolis Railroad; and that all freight interchanged between the two former companies is transported by the Pennsylvania Company, which receives cars from the one and delivers them to the other.

It is not important to set out the other allegations, as they are covered by the agreed facts.

The petitioner alleges that unlawful discrimination is made against his traffic, and asks that an order be made requiring the respondent company to transfer the freight of the petitioner and receive and deliver the same without discrimination, and for any and all further orders in the premises to which he may be entitled.

The answer of the respondent sets out, among other things, that the portion of its railroad which will be used in transferring complainant's freight from the Louisville, Evansville & St. Louis Consolidated Railroad Company to the Louisville, New Albany & Chicago Railway Company, as described by the complainant, lies wholly within the State of Indiana; that respondent has no traffic arrangement with and no interest in or control of the Louisville, New Albany & Chicago Railway Company or the Kentucky & Indiana Bridge Company, over which said freight would have to pass in order to be taken out of the State of Indiana; and the respondent therefore says that the controversy between it and complainant is not within the jurisdiction of the Interstate Commerce Commission.

That the respondent has a continuous line of railway of its own extending from its point of connection with the Louisville, Evansville & St. Louis Railroad Company, at State

street, in New Albany, to the city of Louisville, Ky., where it connects with other railroad tracks having direct connection with the tracks leading to the railroad switch connected with the distillery of the complainant, and that it is feasible to deliver freight destined for said distillery over respondent's line of railroad and its said connections; that respondent has not made, and declines to make, any through route or through rate for traffic coming to it from the Louisville, Evansville & St. Louis Railroad Company and destined for Louisville and other points south, except over respondent's own line of railroad; that the making of a through route or rate on such traffic *via* the Louisville, New Albany & Chicago Railway Company and the Kentucky & Indiana Bridge Company to Louisville would result in diverting traffic from the respondent's own line to Louisville, and would require the respondent to grant the use of its terminal tracks and facilities in New Albany for handling such diverted traffic; that respondent's terminal tracks and facilities extend from State street to Vincennes street, in New Albany, and that the interchange of interstate traffic from the Louisville, Evansville & St. Louis Railroad Company to the Louisville, New Albany & Chicago Railway Company, *via* the respondent's railroad, necessarily requires the use of respondent's terminal tracks and facilities to make such interchange.

Upon the hearing an agreed statement of facts was submitted as the evidence in the case, which statement is as follows:

"1. That complainant is a distiller, operating the distillery described in the complaint, and that the railroad connections with said distillery exist as described in the complaint.

"2. That the connections between the Louisville, Evansville & St. Louis Railway Company and respondent, and the connections between respondent and the Louisville, New Albany & Chicago Railway Company, and Kentucky & Indiana Bridge Company, exist as stated in the complaint.

"3 That respondent, as lessee of the Jeffersonville, Madison & Indianapolis Railroad Company, is a common carrier, engaged in the business of interstate commerce.

"4. That it is feasible and convenient for respondent to receive freight from the Louisville, Evansville & St. Louis Railway Company, at their point of connection at State street, New Albany, and deliver the same to the Louisville, New Albany & Chicago Railway Company, at Vincennes street, New Albany.

"5. That prior to May 1, 1889, the respondent, at the earnest solicitation of the Louisville, Evansville & St. Louis Railway Company, did so receive and deliver two several shipments of grain consigned to complainant at Louisville; that respondent at first refused, in each instance, to make such deliveries, and only did so finally as a matter of accommodation to the Louisville, Evansville & St. Louis Railway Company, to enable it to secure complainant's traffic as against competing lines, and said deliveries were made under an express stipulation with that railroad company that respondent should not thereby establish any precedent for its future action, and should not thereby establish a point of interchange of interstate traffic between it and the Louisville, New Albany & Chicago Railway Company at Vincennes street, New Albany; and complainant's freight was received and delivered by respondent under said stipulation.

"6. That with the exceptions above stated, respondent has never delivered to the Louisville, New Albany & Chicago Railway Company, at Vincennes street, any interstate traffic whatever, and at the time of delivering complainant's last shipment respondent notified the Louisville, Evansville & St. Louis Railway Company that it would not in future deliver any interstate traffic to the Louisville, New Albany & Chicago Railway Company at Vincennes street, in New Albany.

"7. That it is feasible and convenient for complainant's freight to be carried to Louisville over respondent's line of railway, and, by means of its connections in Louisville, delivered at the distillery named in the complaint.

"8. That the delivery by respondent of Louisville traffic to the Louisville, New Albany & Chicago Railway Company at Vincennes street, New Albany, would result in diverting such traffic from respondent's own line extending to Louisville.

“9. That respondent, in delivering cars to and from the Louisville, Evansville & St. Louis Railway Company and the Louisville, New Albany & Chicago Railway Company, at Vincennes street, New Albany, destined for points not reached by or over respondent's lines, makes a switching charge of one dollar per car, and, assuming that the respondent would make the same switching charge on cars destined for Louisville, it would cost complainant one dollar per car more to have his freight transported to Louisville over respondent's line than it would if it was transported *via* the Louisville, New Albany & Chicago Railway Company and the Kentucky & Indiana Bridge Company.

“10. That respondent has never established and refuses to establish any through route or rate to Louisville or other points south, on freight received from the Louisville, Evansville & St. Louis Railway Company, except over its own line to Louisville; and that it has not established and refuses to establish any through route or rate to Louisville *via* the Louisville, New Albany & Chicago Railway Company and the Kentucky & Indiana Bridge Company.

“11. That New Albany, Ind., is a terminal point of respondent's railway; that between Vincennes street and State street in said city the respondent's tracks are laid almost wholly in the public highways; that at State street it has its freight station and principal passenger station; that at Vincennes street and the intermediate streets between it and State street respondent has passenger stations at which passenger trains pass and stop at intervals of thirty minutes between 5:30 a. m. and 12 p. m. every day; that between Vincennes street and State street there are — private sidings connecting respondent's tracks with various business establishments in New Albany, from and to which respondent is constantly receiving and delivering cars shipped from and to said establishments; that the main and side tracks of respondent between Vincennes street and State street in New Albany, are in constant and necessary use by respondent in delivering, receiving, shifting and transporting freight consigned to and shipped from New Albany.

“12. That respondent has no traffic arrangement or con-

tract with the Louisville, New Albany & Chicago Railway Company respecting interstate traffic, and especially traffic passing from New Albany to Louisville from respondent's own line; that it has no interest in or control over the Louisville, New Albany & Chicago Railway Company, or the Kentucky & Indiana Bridge Company, over which complainant's freight would pass in order to reach Louisville.

"13. That a compliance with complainant's demands would only require the respondent to switch complainant's cars from State street to Vincennes street in the city of New Albany, for which service it would receive a switching charge.

"14. That the respondent and the Louisville Bridge Company, over which respondent operates its line, are both controlled by the Pennsylvania Railroad Company."

This last statement was amended by consent on the hearing, to the effect that the respondent company owns a majority of the stock of the Bridge Company, and the Pennsylvania Railroad Company owns a majority of the stock of the respondent, and the facts are so found.

Upon the agreed facts the complainant insists that it is the duty of the respondent company to perform the switching service in the city of New Albany necessary to transfer the cars containing his freight from the Louisville, Evansville & St. Louis Consolidated Railroad to the tracks of the Louisville, New Albany & Chicago Railway, to be taken over the Kentucky & Indiana bridge, and thence to the distillery of the complainant. The ground upon which this duty is supposed to rest is that the freight is interstate traffic; that the road of the respondent, connected with the branch over which the freight in question must move in order to reach the Kentucky & Indiana bridge, is engaged in interstate commerce, and subject to the provisions of the Act to regulate commerce, and is not therefore at liberty to refuse to handle the traffic in question as desired by the complainant.

The respondent company denies that it is required by law to perform this switching service, and interposes three

grounds of objection to the complainant's claim. The first is that the part of the road over which the switching service is desired is wholly within the State of Indiana, and therefore not subject to the provisions of the Act to regulate commerce in respect to this traffic, nor to the jurisdiction of the Commission. The second is that the respondent can not be required under the statute to give the use of its tracks and terminal facilities to another carrier engaged in like business. The third is that the respondent has a line of its own over the Louisville bridge, by which it can deliver the traffic in question upon the terminal tracks of the Kentucky & Indiana Bridge Company, to be taken to complainant's distillery, and that it has a lawful right to discriminate in favor of its own line as against competing lines, and to refuse to unite in any through route or through rate that will result in diverting traffic from its own line.

The several objections, though differing in form, resolve themselves into the general proposition that the Commission has not authority under the statute to order the performance of the service in question, which is the forwarding of interstate traffic in the manner desired by the complainant. It is more in this form than in the separate discussion of the particular points raised that the case will be considered. Some phases of the general question have had consideration in the cases cited on the hearing, and have also been referred to in the annual reports of the Commission. (Missouri & Ill. R. R. Tie & Lumber Co. *v.* The Cape Girardeau & Southwestern R'y Co., 1 I. C. C. Rep. 30; The New Jersey Fruit Exchange *v.* The Central R. R. of N. J. *et al.*, 2 I. C. C. Rep. 142; *Ex parte* Koehler, 30 Fed. Rep. 867; Heck & Petree *v.* East Tenn., Va. & Ga. R'y Co. *et al.*, 1 I. C. C. Rep. 495; 2 Annual Rep. I. C. C. 4, 5, 25, 26 & 70.)

None of these cases are decisive of the broad question now presented, and involved other points upon which they mostly turned.

By the agreed facts the branch or portion of road over which the desired service is sought to be enforced is wholly in one State, but it is part of a road or line engaged in inter-

state commerce. The service required is the forwarding of car-loads of interstate freight from the terminus of the road by which it is brought to New Albany over respondent's road for about a mile to another road to be carried by the latter into Kentucky, the respondent having a track connection with both the other roads. It is not material whether the service be described as transportation, forwarding or handling. The several lines or roads are owned and operated separately, and are not under any common control, management, or arrangement, for a continuous carriage or shipment of interstate commerce.

The provisions of the Act by its terms "apply to any common carrier or carriers engaged in the transportation of passengers or property wholly by railroad, or partly by railroad and partly by water when both are used, under a common control, management, or arrangement, for a continuous carriage or shipment, from one State or Territory," etc. The same section contains the proviso "That the provisions of this Act shall not apply to the transportation of passengers or property, or to the receiving, delivering, storage or handling of property wholly within one State and not shipped to or from a foreign country from or to any State or Territory as aforesaid."

Upon the import of these provisions of the statute, considered with the Act as a whole so far as it has any bearing on these provisions, the controversy mainly arises.

The vital questions in this inquiry are: To what extent, both as regards the traffic and the transportation agencies engaged in it, was it the intention of Congress, as shown by the language of the statute, to regulate interstate commerce? And what was intended to be excluded from regulation by the proviso "That the provisions of this Act shall not apply to the transportation of passengers or property, or to the receiving, delivering, storage, or handling of property wholly in one State," etc?

One theory, and this is the basis of the complainant's contention, is, that traffic which by reason of its origin and destination is interstate does not lose its distinctive charac-

ter when taken up and carried forward by a State carrier to a destination in the State in which such carrier operates, or when so carried to be delivered to another carrier in the same State for further transportation beyond the limits of the State, but that the traffic remains interstate throughout its transit, with whatever incidents pertain to such commerce, and that the various successive carriers engaged in it are subject to the authority of Congress in that business and are embraced in the regulations of the Act. And furthermore, that when a carrier in one State engages in interstate commerce, it becomes a National agency and subjects itself necessarily to the provisions of the Act to regulate commerce for all the legitimate purposes of such commerce, and must accept and forward the traffic offered indifferently, without unjust discrimination or undue preference.

Another theory is, and on this the respondent is understood to rely, that a State carrier which has not entered into arrangements for continuous carriage among the States does not become subject to the Act to regulate commerce by engaging in the carriage within one State of interstate traffic and that it incurs no obligations under that Act either in respect to the traffic actually carried or other interstate traffic offered for carriage, but may, as an independent carrier, wholly in one State, accept or refuse interstate traffic in its discretion, and fix such conditions with regard to rates or otherwise as it may desire.

This is claimed to be the necessary effect of the proviso in the first section of the Act, and under that proviso it is said that the service by a carrier wholly in one State, when not under an arrangement for a continuous carriage, is an independent employment of a separate agency to which the Act does not apply.

The extent of the regulation contemplated by the Act to regulate commerce is therefore directly presented, and perhaps the intention of Congress in the use of the language employed may more clearly appear by some reference to the principles that have been judicially declared to apply to interstate commerce, in the light of which the statute was framed.

The commerce intended to be regulated by the Act is that over which the jurisdiction of the law-making power extends and the regulations provided must be deemed co-extensive with the scope of the power, and with only such limitations as the Act itself makes. The jurisdiction to regulate applies to commerce with foreign nations, and among the several States, and with the Indian tribes. In defining commerce among the States the courts have declared that “‘among’ means intermingled with. A thing which is among others is intermingled with them. Commerce among the States can not stop at the external boundary of each State, but may be introduced into the interior.” (*Gibbons v. Ogden*, 9 Wheat. 194.)

The immunity of interstate commerce from all interference by State authority has been declared in a variety of forms in which the question has arisen. This immunity applies from the beginning to the end of the transportation, alike to the passage out of the State in which it originates, through any other State, and into the State to which it is shipped to its point of destination. While in transit, and until it reaches the consignee and becomes mingled with his general property, it is clothed with the rights and subject only to the rules of interstate commerce. The freedom of its movement may not be impeded, nor rates and charges prescribed for its carriage by any action of a State. (*Wabash Ry. Co. v. Illinois*, 118 U. S. 557.)

This principle has been further applied as follows: “Whenever a commodity has begun to move as an article of trade from one State to another, commerce in that commodity has commenced. The fact that several different agencies are employed in transporting the commodity, some acting entirely in one State and some acting through two or more States, does in no respect affect the character of the transaction. To the extent in which each agency acts in that transportation, it is subject to the regulation of Congress.” (*The Daniel Ball*, 10 Wall. 565.) In the same case it was further said: “We are unable to draw any clear and distinct line between the authority of Congress to regulate an agency employed in commerce between the States, when that agency

extends through two or more States, and when it is confined in its action entirely within the limits of a single State. If its authority does not extend to an agency in such commerce when that agency is confined within the limits of a State, its entire authority over interstate commerce may be defeated. Several agencies combining, each taking up the commodity transported at the boundary line at one end of a State and leaving it at the boundary line at the other end, the Federal jurisdiction would be entirely ousted, and the constitutional provision would become a dead letter."

The immunity of interstate and foreign commerce from the taxing power of a State has also been applied. When goods have begun to be transported from the State in which they are produced they have become the subjects of interstate commerce and as such are subject to National regulation and cease to be taxable by the State of their origin, nor can they be taxed by another State while on the route to their destination, though detained temporarily within a State by some impediment to transportation or other cause. (*Coe v. Errol*, 116 U. S. 517.)

A State can not impose a tax upon the gross receipts of railroads for the carriage of freights and passengers out of, into, or through the State, for the reason that it imposes a burden upon commerce among the States. (*Fargo v. Michigan*, 121 U. S. 230.)

The same principle was applied to a telegraph company in a case arising under a State statute imposing a general license tax. It was held that no State has the right to lay a tax on interstate commerce in any form, whether by way of duties laid on the transportation of the subjects of that commerce, or on the receipts derived from that transportation, or on the occupation or business of carrying it on, for the reason that such a tax is a burden on that commerce and amounts to a regulation of it. (*Leloup v. Port of Mobile*, 127 U. S. 641.)

The exclusive authority of Congress to regulate commerce among the States is not restricted to goods, but applies to instrumentalities and persons as well, and alike on the navigable waters and on the land. In *Gibbons v. Ogden*, 9

Wheat. 229, it is said: "Commerce in its simplest signification means an exchange of goods; but in the advancement of society, labor, transportation, intelligence, care and various mediums of exchange become commodities and enter into commerce; the subject, the vehicle, the agent, and their various operations become the objects of commercial regulation." In *Sherloch, &c. v. Alling, &c.*, 93 U. S. 103, it is said: "The commercial power conferred by the Constitution is one without limitation. It authorizes legislation with respect to all the subjects of foreign and interstate commerce, the persons engaged in and the instruments by which it is carried on." In 114 U. S. 196, it is said in reference to the commerce power of Congress: "It is the power to prescribe the rules by which it shall be governed—that is, the conditions upon which it shall be conducted. That it embraces within its control all the instrumentalities by which that commerce may be carried on, and the means by which it may be aided and encouraged."

And in the exercise of its power to regulate commerce among the States Congress has authority to construct, or authorize individuals or corporations to construct, railroads across the States or Territories of the United States. (*California v. Pacific R. R. Co.*, 127 U. S. 1.) The same power also embraces the construction of bridges across navigable rivers, their form and character, and the extent to which they may affect navigation. (*Bridge Co. v. United States*, 105 U. S. 470.) This power may be exercised without the consent and against the protest of a State to authorize a State railroad company to erect bridges over navigable waters, piers, and other instrumentalities to be used for interstate commerce, and to take lands belonging to a State or to individuals necessary for these purposes. (*Stockton v. Balt. & N. Y. R. R. Co.*, 32 Fed. Rep. 9.)

In *Pensacola Tel. Co. v. West. Un. Tel. Co.*, 96 U. S. 1, and other cases following that decision, the principle is declared that the exclusive powers of regulation by Congress are not confined to the instrumentalities of commerce in use when the Constitution was adopted, but keep pace with the pro-

gress of the country, and adapt themselves to the new developments of time and circumstances.

The reasons for exclusive regulation by Congress are set forth in many cases. In the case of *The State Freight Tax*, 15 Wall. 279, it is stated in substance that whenever the subjects affected by the regulation of Congress are in their nature national, or admit of one uniform system or plan of regulation, they are within the exclusive authority of Congress. That transportation of passengers or merchandise through a State, or from one State to another, is of this nature, and that it is of national importance, in order to prevent oppressive State interference, and guard against commercial embarrassment, that over that subject there should be but one regulating power.

The commerce not subject to National regulation has frequently been defined. In one case it was said: "The rule that the regulation of commerce which is confined exclusively within the jurisdiction and territory of a State and does not affect other nations or States or the Indian tribes, that is to say, the purely internal commerce of a State, belongs exclusively to the State, is as well settled as that the regulation of commerce which does affect other nations or States or the Indian tribes belongs to Congress." (*Tel. Co. v. Texas*, 105 U. S. 466.)

And in another case the court said: "The internal commerce of a State—that is, the commerce which is wholly confined within its limits—is as much under its control as foreign commerce or interstate commerce is under the control of the General Government." (*Sands v. Manistee, &c.* 123 U. S. 295.)

In the elaborate report of the Senate Committee, made in January, 1886, reference is made to some of the foregoing cases, and the case of *Louisville & Nashville R. R. Co. v. R. R. Commission of Tenn.*, 19 Fed. Rep. 679, is referred to approvingly. In this case it was decided that the power of the States relating to commerce and its incidents "is limited to domestic transportation, which means that carried on exclusively within the boundaries of a State, and transportation can be domestic only when it begins and ends within

those boundaries; and this definition can not, for the purpose of enlarging State authority, be held to include so much of a transportation on a continuous shipment between two or more States as will cover the distance traveled within the limits of any one of those States; for this construction would destroy the exclusive power of Congress over interstate transportation, and enables the States to restrict, obstruct or impair that freedom of commerce between the States which it was the object of the constitutional provision to permanently secure. It can only include the transportation carried on upon roads lying wholly within the State, or else it may be to shipments beginning and ending in the State, without reference to the character of the road in that regard."

After an extended review of the decisions of the courts, the committee states its conclusions with regard to the regulation of commerce by Congress as follows:

"The decisions to which reference has been made conclusively establish, in the judgment of the committee, the following propositions as to the power of Congress, under the commercial clause of the Constitution, to regulate all railroads engaged in interstate commerce within the United States:

"(1) Commerce, in the meaning of the Constitution, includes the transportation of persons and property from place to place by railroad.

"(2) Commerce among the States includes the transportation of persons and property from a place in one State to a place in another State. Interstate commerce is all commerce that concerns more States than one, and embraces all transportation which begins in one State and ends in or passes through another State.

"(3) The power to regulate such commerce is vested exclusively in Congress, without any limitations as to the measures to be adopted or the means to be employed in its discretion for the public welfare.

“(4) The States being without power to regulate interstate transportation, the people must look to Congress alone for whatever regulation may be necessary as to interstate commerce.”

In some of the cases language is used indicating continuity of carriage among States, or a contract for that purpose, as a feature of the transportation that divests it of State regulation and gives it the character and immunities of interstate commerce. Such phrases as “transportation of goods through more than one State in one voyage,” “contract that is a unit for the entire transportation,” “continuous transportation over several States,” are used in *Wabash, &c. v. Illinois*, 118 U. S. 557, and evidently were regarded as elements of importance in the decision of the case.

They may have been referred to as facts of that case, which related to rates made in disregard of the rule prescribed by the State, and not in the sense of jurisdictional conditions; and in nearly all other cases where interstate commerce has been discussed no allusion is made to an entire contract for continuous carriage as essential to exclusive Federal jurisdiction. Obviously, in the transportation of freight a bill of lading specifying its destination is necessary, and this implies one voyage for the property. And while an initial carrier can not contract for a joint rate at less than the aggregate of the locals in the absence of an arrangement for the purpose, it can name the total rate at the sum of the locals in effect, and bill through to destination in that way. The Act, in describing the carriers that are subject to its provisions, defines them as those engaged in the transportation of passengers or property “for a continuous carriage or shipment.” The words “under a common control, management, or arrangement” preceding those last quoted, may be somewhat ambiguous as to their application, whether to combined rail and water carriers or generally to all. But that they are not intended as a limitation upon jurisdiction, or of the subjects regulated, is evident from the seventh section, which provides—

“That it shall be unlawful for any common carrier sub-

ject to the provisions of this Act to enter into any combination, contract, or agreement, expressed or implied, to prevent, by change of time schedule, carriage in different cars, or by other means or devices, the carriage of freights from being continuous from the place of shipment to the place of destination; and no break of bulk, stoppage, or interruption made by such common carrier shall prevent the carriage of freights from being and being treated as one continuous carriage from the place of shipment to the place of destination, unless such break, stoppage, or interruption was made in good faith for some necessary purpose, and without any intent to avoid or unnecessarily interrupt such continuous carriage or to evade any of the provisions of this Act."

The term "continuous" no doubt implies joined, connected, without interval or interruption, for some purpose inconsistent with further carriage. Carriage does not cease to be continuous by incidental halts for inspection, customs purposes or transfers from one carrier to another. When a shipment is continuous the carriage is deemed continuous for the purposes of the Act. In some branches of law a broad construction has been given to "continuous voyage," extending it beyond a stopping point where trans-shipment is to be made, and depending upon original intention and ultimate destination. (The Springbok, 5 Wall. 1, 28; 3 Whart. Internat. Law, sec. 362, 388.)

The sense in which "continuous carriage or shipment" is used in the Act to regulate commerce is defined by the Act itself in the section above cited, and carriers are not allowed by any device to "prevent the carriage of freights from being and being treated as one continuous carriage from the place of shipment to the place of destination."

As has been seen, the principles that apply to interstate commerce, as enunciated by the courts, constitute a comprehensive system, all the parts of which are embraced within the sphere of Federal regulation. These principles may properly guide in the interpretation of the provisions of the Act, and indicate the extent of the regulation intended, so far as the power to regulate has been exercised. Plainly the

Act does not in all respects go to the extent of the power. For example, it does not apply to independent carriers by water. The provisions adopted were perhaps regarded as sufficient until experience should show a necessity or propriety for further legislation. The general purpose of these provisions is to bring interstate commerce under a uniform system of defined rules. These rules are for the government of a business that is national in its character, that has a right of way through States and Territories and can not be hindered or obstructed by any other authority than Congress, and which includes all structures, agencies and instrumentalities employed in the business, as well as the commodities that are carried. Only commerce not national in its character—that is, the purely internal commerce of a State—is not subject to rules prescribed by the national authority. The boundary of authority is therefore clearly marked, and the statute must be presumed to correspond with the scope of the power. This construction will give legitimate effect to all its provisions. A remedial statute is to be construed in furtherance of its declared objects.

Every common carrier, whether wholly by railroad or conjointly by railroad and water, engaged in the transportation of interstate or foreign commerce for a continuous carriage or shipment is declared to be subject to the Act. Transportation wholly within one State, unless for a shipment to or from a foreign country, is declared to be excluded. What is the scope of this exclusion? What is meant by transportation wholly within one State? The answer seems plain. It is evidently the transportation that is an element of the commerce not subject to the jurisdiction of Congress. This commerce the courts say is only that “which is confined exclusively within the jurisdiction and territory of a State and does not affect other nations or States or the Indian tribes—that is to say, the purely internal commerce of a State;” “the commerce which is wholly confined within the limits of a State.” Under this principle transportation wholly within one State, to which the Act does not apply, must originate and end in the same State. If the transportation be part of a voyage from one State to another, or of a shipment to or

from a foreign country, it is interstate or foreign commerce and subject to the Act.

And under the rule that commerce includes all the agencies employed in it, when a carrier located and operated only within one State engages in interstate transportation it becomes an instrument of commerce among the States, and is subject for all the purposes of such commerce to the provisions of the Act. Such a carrier was in contemplation in the provision in the sixth section respecting "continuous lines or routes operated by more than one common carrier."

While so much of its business as is confined wholly to the limits of its State is not affected it can not change the character nor impair the rights of interstate business. And when it becomes a national agency it can not limit the extent of its obligations. It must comply with the rules prescribed by national authority, and neither territorial boundary lines nor corporate existence derived from another source can prove effectual to relieve it from the rules of the service in which it engages. In this respect it does not differ from a person. If its relation to commerce is that of a national carrier its obligations are those prescribed by the national authority for such carriers. It can not engage in the service and reject the obligations imposed for the regulation of the service. One of these obligations, founded on the public interests, is impartiality in receiving, forwarding and delivering interstate traffic. There can be no preferential service in this respect as regards persons, carriers or traffic, and no refusal to do for some what is done for others, nor any unjust discrimination in charges.

The necessary result of these considerations is that the respondent's contention with regard to its relations to the law, and its corresponding duties, must be overruled. Its position is, in brief, that it is a carrier wholly in one State, and therefore is not subject to the Act. The fact that the particular transportation demanded in this case is wholly in one State is true, but the conclusion deduced from it is erroneous. It is one of the admitted facts in the case that the respondent is engaged in interstate transportation, and the traffic in question is interstate traffic. These facts are con-

trolling, and make it the duty of the respondent to receive and forward it.

To this extent the requirements of the Act are plain. But at this point a difficulty is encountered, and, owing to the omission of some provisions in the Act, the order asked by the complainant can not be made. He asks a through route for the cars containing his goods from one carrier over the tracks of the respondent to another carrier, to be taken by the latter further on toward their destination. This claim is founded on the third section of the Act. It is to be regretted that the language of that section with regard to exchanges between connecting lines is not clearer and more definite. Whatever may have been intended to be expressed by the greatly condensed language of that section, it apparently contains no provisions for a compulsory ordering of through routes or through rates over lines that physically connect. The provisions of the English statute, which are full and specific for these purposes, were before the law-making body when the Act was framed, and they were not incorporated. This would seem to indicate that, for reasons deemed satisfactory, they were not intended to be adopted. The Commission has given full consideration to this point in the case of *The Little Rock & Memphis R. R. Co. v. The East Tenn., Va. & Ga. R. R. Co.* and another, 3 I. C. C. Rep. 1, and there ruled that the authority to order a through route was not conferred by the Act. The conclusion then reached is adhered to in this case.

The point was considered and passed upon by the United States Circuit Court for the sixth district, in the case of *Kentucky & Indiana Bridge Co. v. Louisville & Nashville R. R. Co.*, 37 Fed. Rep. 567, and the court held that this "Commission is not invested with authority to establish through routes nor to fix through rates between connecting lines. The English Act of 1873, amendatory of the Act of 1854, did confer such authority upon the English Commission; but our Act to regulate commerce contains no such provision and confers no such authority."

A decision upon the same point has recently been announced by the United States Circuit Court for the eighth

circuit. The court held that "a court of equity has no power either at common law or under the Interstate Commerce Act to compel a railroad company to enter into a contract with another company for a joint through rate or joint through routing of freight or passengers." (*Little Rock & Memphis R. R. Co. v. St. L., I. M. & S. R. R. Co. et al.*, 2 Int. Com. Rep. (Law Co-op.), 763.

Until there shall be further legislation or more authoritative judicial interpretation the point may be regarded as adjudicated by the rulings of the Commission and as having judicial sanction.

In this case the respondent does not refuse to accept and forward the freight. It professes willingness to do so, but insists on the right to make use of its own line for the purpose, and denies that the shipper can require a through routing over only a part of the respondent's line to transfer freight between two other lines with which the respondent has no arrangement for through routes. It is not a question, therefore, of forwarding or not forwarding interstate traffic to its destination, but of the manner of doing it, and whether the shipper can determine that for himself irrespective of the objections of the carrier, and call upon the Commission and the courts to enforce his claim.

The Commission not having the power under the statute to make the order asked by the complainant, the complaint must be dismissed.

MARY O. STONE AND THOMAS CARTEN v. THE DETROIT, GRAND HAVEN & MILWAUKEE RAILWAY COMPANY.

Complaint filed September 24, 1888. Answer filed October 8, 1888. Heard January 29, 1889. Brief for complainants filed January 24, 1889. Briefs for defendant and cartage companies filed January 29, 1889. Decided April 26, 1890.

Where a common carrier subject to the Act to regulate commerce has established and published its schedule of rates and charges for a station on its line, free cartage furnished by the carrier for the collection and delivery of freight carried on its road to or from such station operates as a reduction or rebate from the schedule charge, and is unlawful. If free cartage at a station has the effect to reduce a rate below the charge at another station nearer the point of shipment it is unlawful as a less charge for a longer distance over the same line and in the same direction, the less being included within the greater.

It is not material to the question of the lawfulness of free cartage furnished at one town and not at another that the business was done in that way for many years before the Act to regulate commerce was enacted. If what was done and is now done works unjust discrimination, or is in any particular obnoxious to the law, it is an abuse, and one that it must be assumed was intended to be corrected by the Act.

The respondent company had a tariff schedule in effect grouping the rates from eastern points at Ionia and Grand Rapids in Michigan, Ionia being the shorter distance, and furnished free cartage at Grand Rapids and not at Ionia.

Upon complaint by a firm of dealers at Ionia:

Held that the free cartage at Grand Rapids was in effect a rebate and unlawful.

Thomas F. McGarry and Ashley Pond, for complainants.

E. W. Melldough, for defendant.

Otto Kirchner, for cartage companies.

REPORT AND OPINION OF THE COMMISSION.

COOLEY, *Chairman* :

The complaint in this proceeding sets forth that complainants are merchants doing business in the city of Ionia in the State of Michigan, and that they purchase their goods at Philadelphia, New York, and other points east of Detroit. That respondent is a carrier of passengers and property partly by railroad and partly by water from the city of Detroit through and across the State of Michigan to the city of Grand Haven, and thence across Lake Michigan to Milwaukee, in the State of Wisconsin, passing through said city of Ionia, and also through the city of Grand Rapids, in the State of Michigan. That for its services as such common carrier in carrying merchandise it has established and published a tariff of charges by which it makes on all freights from Philadelphia, New York and all other points east of Detroit the same rates for petitioners and others at Ionia that are charged for the same class of freights to the merchants of Grand Rapids. That all shipments of freights from Philadelphia, New York and other points east of Detroit pass through Ionia before reaching Grand Rapids, and over the same line and in the same direction, the shorter being included in the longer distance. That respondent while openly charging petitioners no more for the transportation of freights from Philadelphia, New York, and points east of Detroit than is charged for similar freights so consigned to the merchants of Grand Rapids, nevertheless discriminates in favor of the merchants of Grand Rapids and against petitioners by delivering all such freights at the warehouse in Ionia and at the doors of consignees at Grand Rapids, thus charging petitioners and the merchants of Ionia more on freights consigned from Philadelphia, New York and other points east of Detroit delivered at their doors than it charges on similar shipments delivered to merchants doing business at Grand Rapids. That respondent, as a means of transportation of such freight, employs under contract a system of drays which take the freight at the warehouse in Grand Rapids and deliver the same to the merchants of the city free of charge,

while the same service costs petitioners and the merchants of Ionia from ten to thirty-three per cent. of the freight charges in addition thereto, so that petitioners and the merchants of Ionia are compelled to pay for the transportation from Philadelphia, New York and points east of Detroit from ten to thirty-three per cent. more than is charged for the transportation by the respondent railway company for similar shipments to the merchants of Grand Rapids. That by this discrimination respondent violates sections 2, 3 and 4 of the Act to regulate commerce—

First: In charging, collecting and receiving from petitioners and the merchants of Ionia a greater compensation for service rendered in the transportation of property from Philadelphia, New York and points east of Detroit than respondent charges, demands or receives from the merchants of Grand Rapids for the like service under substantially similar circumstances.

Second: In giving an undue and unreasonable preference and advantage to the merchants of Grand Rapids, subjecting petitioners and the merchants of Ionia to undue and unreasonable prejudice and disadvantage.

Third: In charging more for a shorter than for a longer distance over the same line in the same direction, the shorter being included in the longer distance.

Petitioners pray an investigation and that respondent may be ordered to discontinue the further draying of freights for the merchants of Grand Rapids of merchandise consigned from Philadelphia, New York and points east of Detroit, or to render the like service to petitioners and the merchants of Ionia. And for other and further relief.

The respondent answered the complaint paragraph by paragraph, but in view of the stipulation of facts it is not deemed necessary to recite the answer here. The free cartage at Grand Rapids is admitted and it is openly and notoriously done and has been for a long period of time, to wit, for twenty-five years and upwards. In justification of this, respondent says that its station at Grand Rapids is on an

average one and one-quarter miles from the business sections of the city where the traffic of the places tributary to respondent's road reaches or terminates, while its station for receiving and discharging freight and property at Ionia is not to exceed one-eighth of a mile from the business centre of the city. At Grand Rapids there are two other railroads, the Michigan Central and the Detroit, Lansing & Northern, both of which are immediately and directly competitive with respondent's road for the business of the place, and their stations for the receiving and discharging of freight and property at that place are in the business centre of the city, requiring only a short haul to and from their stations of a distance not to exceed on the average one-quarter of a mile. Respondent did the carting of freight to and from its station at Grand Rapids substantially the same as at present before the other roads were constructed to that place. Respondent denies that petitioners or any other person, firm or corporation at Ionia, interested in transportation over its road, encounters competition in business to any appreciable extent with business at Grand Rapids.

The case being thus at issue the parties entered into a written stipulation of facts which constituted the sole evidence on which the case was submitted for decision. Upon that evidence we find the facts to be as follows:

1. The complainants are co-partners, doing business under the firm name of Stone & Carten, and are engaged in the sale at retail of goods, wares and merchandise in the city of Ionia, county of Ionia, and State of Michigan, purchasing said goods, wares and merchandise at Philadelphia, Pa., New York, N. Y., Boston, Mass., and points east of Detroit, Michigan.

2. That the respondent railway company is a corporation existing under and pursuant to the laws of the State of Michigan, and is a common carrier of passengers and property for hire between the city of Detroit and the city of Grand Haven, both of said places and its entire line of railroad being in the State of Michigan; but it does not own and control a line of steamboats plying across Lake Michigan,

between Grand Haven and Milwaukee, Wisconsin, but there is a line of steamboats engaged in the transportation of persons and property across Lake Michigan, between Grand Haven and Milwaukee, from which the respondent receives traffic consigned over its road from Milwaukee, and to which it delivers traffic from its road destined to Milwaukee; that all of said boats are under the control and direction of an independent corporation, organized under the laws of the State of Michigan, by the name of The Grand Haven & Milwaukee Transportation Company; that the management of the business of the last-named company is under the management and control of the same officers as those which manage and control the road and business of the respondent.

3. The respondent, for its services, as a common carrier for continuous shipment, under a common arrangement, of property from Detroit to its stations on its line of transportation, established and published a schedule of rates and charges, a tariff of freights, which makes on all freights from Philadelphia, New York and Boston, and all other points east of Detroit, consigned over the respondent's road, the same rates and charges for the complainant's which is made and charged for the same class of freights to the merchants doing business at the city of Grand Rapids, a copy of which schedule or tariff is hereto annexed and made and deemed a part of this stipulation.

4. The shipments of freight from Philadelphia, New York, Boston, and points east of Detroit which are delivered to the respondent's road at said city of Detroit and transported by it over its line of railway, pass through the city of Ionia before reaching the city of Grand Rapids; that it is a shorter distance from Detroit to Ionia than from Detroit to Grand Rapids, and over the same line, in the same direction, the shorter being included in the longer distance.

5. That the respondent provides, at its own expense, drays, carts and trucks at the city of Grand Rapids for the service of transporting merchandise and freight generally,

as well as merchandise and freight consigned from Philadelphia, New York, Boston and points east of Detroit, between its station at Grand Rapids and the places of business of merchants, traders and other patrons of its road at that place, which service it performs without additional charge to the owner or shipper of property on account thereof; that this service is not furnished to complainants or other merchants, traders and patrons of its road at the city of Ionia; that this service at Grand Rapids has been openly and notoriously rendered for a long period of time, to wit, for twenty-five years and upwards; that its station at the said city of Grand Rapids is within the corporate limits thereof, and is on an average one and a quarter miles from the business sections of said city where the traffic of the places tributary to respondent's road originates and terminates, while respondent's station for receiving and discharging freight and property at the city of Ionia is not to exceed an eighth of a mile from the business centre of said city; that at the city of Grand Rapids there are two other railroads, the Michigan Central Railroad and the Grand Rapids, Lansing & Detroit Railroad, both of which are immediately and directly in competition with respondent's road for the business of Grand Rapids; that the stations of both of said roads for receiving and discharging freight and property at Grand Rapids are near the business centre of said city, requiring only short haul to and from their stations, on an average about one-quarter of a mile; that respondent did the carting of freight to and from its station at Grand Rapids, substantially in the same manner as at present, long prior to the time when either said Michigan Central or Grand Rapids, Lansing & Detroit railroads was constructed to that place.

6. That the actual cost of carting or draying freight from the respondent's warehouse in the said city of Ionia to the several places in said city of Ionia to and from which traffic has to be hauled is two cents per hundred weight; that the cost of carting or draying freight transported over respondent's line to and from the places of business of the mer-

chants, traders, and other patrons of its road at Grand Rapids is two cents per hundred weight.

7. That there is but slight competition encountered by the complainants and other persons, firms and corporations engaged in business at the city of Ionia interested in shipping over respondent's road, with similar business at the city of Grand Rapids.

9. That complainants have not brought any suit for the recovery of money or damage for which the respondent is alleged to be liable under the provisions of the Act to regulate commerce, but have elected to adopt this procedure as the sole means of obtaining relief.

10. The city of Grand Rapids has a population of about 70,000; The city of Ionia has a population of about 6,000. The freight traffic to and from Grand Rapids by all roads in 1887 amounted to 982,685 tons. The freight traffic to and from Ionia by all roads for the same time amounted to about 55,000 tons.

11. Cartage by railway companies in a similar manner to that at Grand Rapids is conducted by other railway companies at exceptional stations in the State of Michigan, and more or less extensively practiced by companies in other States at exceptional stations.

In disposing of this case it is proper to say at the outset that the complaint made of the respondent is not that it gives free cartage between its warehouse and the places of business of the patrons of its road at Grand Rapids, for it is not pretended that this of itself would be illegal. The complaint is that the free cartage is given to the patrons of the road at Grand Rapids, and a like service is not rendered on similar consignments to the patrons of the road at Ionia, though the latter are charged the same rates on the traffic. This, it is claimed is unlawful:

First. Because to render such service at Grand Rapids is equivalent in law to granting to its dealers a special rate or rebate equal to the cost of the cartage.

Second. Because the performance of this service gives to the Grand Rapids dealers an undue and unreasonable preference and advantage.

Third. Because the respondent exacts a greater compensation for the transportation of a like kind of property from Eastern cities to Ionia—a shorter distance than from the same cities to Grand Rapids—a longer distance over the same line and in the same direction, the shorter being included in the longer distance and the circumstances of carriage being substantially similar.

This is the complaint; and as thus summarized it presents allegations of three distinct violations of law, all shown by the same state of facts. If either one of them is well founded the complaint must be sustained.

It may be further stated at the outset that it is wholly immaterial to the legal questions now raised that the business at the two towns is now done just as it was done for many years before the Act to regulate commerce was enacted. If what has been and is now done works an unjust discrimination, or is in any particular obnoxious to the general spirit and intent of the Act, it is an abuse, and we may assume that it was one of the very abuses which were within the contemplation of Congress when the Act was passed and which were meant to be corrected. But whether specially in contemplation or not, if it would be illegal as a new practice, it is equally so as an old practice; time might habituate the people to it and induce acquiescence, but could never, as against the express provisions of the statute compel submission.

It is still further to be said that the fact that Ionia is a small town and its dealers scarcely come at all into competition with the dealers of Grand Rapids is no answer to the complaint made. On a question of unjust discrimination the fact of competition may be properly considered, for all the circumstances of situation ought to be known to enable the proper judgment to be formed; but it may happen that as between a large town and a small the reason why there is no

competition is because the more favorable rates to the former have built it up and kept the latter in a condition of subordination and dependence. It would be difficult to conceive of discrimination more unjust than that which has such a blighting effect; and the wrong would be emphasized and aggravated if the very helplessness which the injustice has begotten could in law be an answer to any complaint for redress. What was said by the Commission in *Martin v. Chicago, B. & Q. R. Co.*, 2 I. C. C. Rep. 25, is applicable here, and we see no occasion to depart from the views there expressed. If the interests of the two towns were entirely distinct and non-competitive, there might still be unjust discrimination in giving to the one more favorable rates than to the other, and if the complaint in that particular were not sustained, the question of violation of the long and short haul clause of the Act would remain. Upon that question the fact of competition would have at the best very remote if any influence.

Coming then directly to the principal questions raised, we may first inquire whether what is done by the respondent at Grand Rapids is equivalent to the payment of a rebate to shippers.

It is contended by the defense that the cartage is merely a terminal expense—an expense imposed upon the respondent because the situation of its warehouse is so remote from the business part of Grand Rapids that it would otherwise be excluded from the business by its competitors.

It must be conceded, however, that cartage is not in general a terminal expense, and is not in general assumed by the carrier. The transportation as between the carrier and its patrons ends when the freights are received at the warehouse, and the charge made is for a service which ends there. This is the rule; and if the distance of the warehouse from the center of business of a city creates an exception in any case, so as to make the consignee's place of business the end of transportation, no one has undertaken to indicate to us the distance upon which the exception would depend. The distance in this case is a mile and a half; but if it were

but half that distance, it would still be open to the carrier to say that the case was exceptional, and upon that ground to assume the payment for cartage if its interest would apparently be subserved thereby. Of course the cost is made a terminal expense by the mere fact of assumption, but it does not follow that as between the carrier and its patrons at another point it is properly such.

The effect of the respondent doing the cartage at its own cost of two cents per hundred pounds is precisely the same that it would be if all its rates to Grand Rapids were made two cents a hundred pounds less and the consignees were left to pay the cost of cartage. But if that were done the Ionia rates would clearly be illegal, because they would be two cents a hundred pounds more than the Grand Rapids rates. If, then, the argument for the respondent is sound, the same thing in substance and effect may be legal to be done in one way and illegal when done in another; the form will determine its lawfulness and not its substance. So if the rates to the two towns were made the same, but the Grand Rapids consignees were allowed a rebate of two cents a hundred because of their greater distance from the railroad warehouse, the illegality would seem to be equally obvious. But this would differ from the present arrangement in form only, not at all in substance.

The difficulty with respondent's position springs from the fact that Ionia and Grand Rapids are grouped, and the same rates nominally given to both. It is not competent to give to Grand Rapids the lesser rates on consignments from eastern points, for it is not claimed that the transportation to the one town is made under circumstances and conditions substantially different from those under which it is made to the other. The only difference apparent is in this very matter of cartage, and that is a matter not ordinarily included in the transportation at all, and if included it appears by the agreed facts to be no more expense at the one town than at the other. When therefore the respondent is itself at the cost of the cartage at Grand Rapids and not at Ionia, it does in effect make to consignees at Ionia a charge which is greater upon the shorter haul than is made to those at Grand

Rapids upon the longer haul, and no attempt is made to justify it under the law by making proof of dissimilar circumstances and conditions. The respondent for the charge it makes to consignees at Grand Rapids performs a service additional to that which is performed to consignees at Ionia—a service the value and cost of which is two cents a hundred pounds—and reduces the charge made at Grand Rapids for the service performed for consignees at Ionia by that much.

It follows that the long and short haul clause of the fourth section of the Act to regulate commerce is violated, and consignees at Ionia are overcharged to the extent indicated. The complaint will be sustained on that ground and order will be entered accordingly without expressly passing upon other points raised.

Commissioners MORRISON and SCHOONMAKER concur in the foregoing report and opinion, with the addition thereto that the free-cartage service rendered by the respondent at Grand Rapids is unlawful on the further ground that it is in effect a device for receiving less than the established tariff rate to and from that point. Conceding that it works no discrimination between shippers and consignees at Grand Rapids who are patrons of the respondent, it nevertheless serves as a rebate or it can have no value at all. It compels competing carriers to meet it by a reduction of rate or to perform a like service.

The purpose of the Act is to be gathered from all its provisions. It is provided in the sixth section that when a common carrier shall have established and published its rates, fares and charges, it shall be unlawful for it to charge or receive a greater or less compensation for the transportation of persons or property, or for any service in connection therewith, than is specified in such published schedule. Nominally receiving a full rate with one hand and paying part of it back with the other, either in money or its equivalent in service, is plainly, whether so intended or not, a device that works an evasion of the law, and continues a practice that is now unlawful. The fact that the practice

existed prior to the law, and was in use to some extent by other carriers, does not aid its lawfulness. It never was general, but at most only an exceptional practice, and its lawfulness is to be determined not by former or even present use, but by the provisions of the Act. The nature of the device is tested by its practical results upon competitors, above stated. The cartage service is a service in connection with the transportation, and is in effect an indirect rebate from the rate to the extent of the value of the cartage. It results in the carrier getting less than its tariff rate for its service, and is therefore unlawful.

The order of the Commission is that the respondent within thirty days from the service of a copy of this report and opinion cease and desist from the violation of law found in the report and consisting in furnishing free cartage to and from its station at Grand Rapids, Michigan, for freight carried on its road.

Commissioner VEAZEY takes no part in the decision, not having sat in the case.

DISSENTING REPORT AND OPINION.

BRAGG, *Commissioner*:

I am unable to agree to the finding of facts and conclusions reached by the majority of the Commission in this proceeding. After this case had been argued upon the evidence set forth in an agreed statement of facts as shown in the report and opinion of the majority of the Commission, it was deemed desirable, on account of the importance of the various questions presented that it should be argued again, and this was done. At the second hearing some further facts were developed not in the agreed statement of facts, and about which there was no dispute. These facts were that the defendant and its rival competitors, the Michigan Central Railroad Company and the Detroit, Lansing & Northern Railroad Company, had each made free delivery and receipt of freight from and to their respective depots to consignees

in Grand Rapids by means of drays for a period of about three months, and in like manner received freight from shippers at that station, but that this had been discontinued by the Michigan Central Railroad Company and the Detroit, Lansing & Northern Railroad Company about twelve months ago. It further appeared that the Michigan Central Railroad Company had procured the complaint in this proceeding to be brought by the petitioners, Stone & Carten, against the defendant, and that the petitioners were merely nominal parties. It is not therefore in fact the complaint of shippers at Ionia, but it is in reality the complaint of the Michigan Central Railroad Company.

If the construction of the statute reached in this proceeding by the majority of the Commission is to be adopted as the rule on this subject, the point of receipt or delivery of freight in every case may become material in determining the question of a violation of section four; or of an unlawful preference; or of an unreasonable or unjust prejudice; and towns where the station is comparatively distant may insist that other towns beyond them on the same line can not enjoy the advantage of stations much nearer unless a corresponding change in rates is made because drayage is materially less. It will then logically follow and be next in order for us to prescribe what must be the average distance of a depot from the business portion of a town or city in order to avoid unjust discrimination, or unlawful preference, or undue or unreasonable prejudice to the business of such town or city. The statute deals, as we have frequently decided, with the substance of things, and does not undertake to reduce them to mathematical certainty. We have frequently held in the matter of rates it was impracticable to reduce them to mathematical accuracy as between different towns and localities.

As incident to its business, a carrier, like the defendant, has the right to engage in the cartage of goods to and from its depot. It may make a reasonable charge for this service, but if it does it must charge all alike for the same service at the same depot. In the accommodation of its traffic and in the exigencies of its business it may, as a transporta-

tion expense, make no charge for such service; but if it does this it must treat all alike at that depot, and must not show preference to some over others in rendering the same service. In receiving, delivering, and carrying such freight every carrier is indeed a servant of the public and must treat all fairly and alike; but it is also a business corporation, and in managing its affairs and in meeting the exigencies of its traffic the statute requires that it shall abstain from such methods only as violate its provisions. In all other respects the statute leaves it untrammelled to conduct its own business as its owners may deem best in accommodating the public. A depot warehouse is a convenience of which it may avail itself or not as it may determine the accommodation of its traffic requires at a particular station, or it may make personal delivery of freight to every consignee at that station, or receive at his place of business freight from every shipper at that station, provided in doing so that it treats all fairly and alike and makes no extortionate charge for the service rendered. These are the absolute and undeniable rights of a carrier under the law.

The rate for transportation from the points named to Ionia and Grand Rapids is the same, and Grand Rapids is thirty-three miles further from these points of origin of the freight than Ionia, and in reaching Grand Rapids the freight passes by Ionia over defendant's line. The rates to Ionia from these eastern points of origin are made the same by the defendant and its rival and competing line, the Detroit, Lansing & Northern Railroad; and at Grand Rapids the rates from these eastern points are made the same by the defendant and its rival and competing lines, the Detroit, Lansing & Northern Railroad and the Michigan Central Railroad. The distance on freight from Boston to Ionia, whether it comes over the line of the defendant and its connecting lines or whether it comes over the Detroit, Lansing & Northern and its connecting lines, is practically the same; and this is true in the distance on freight from New York to Ionia; and it is also equally true in the distance on freight from Philadelphia to Ionia over the lines of these carriers. The relative distance

from each of these eastern points to Grand Rapids by the respective lines of these three railroads is about the same. The statement of these facts accounts for the rates being the same from these eastern cities to Grand Rapids and Ionia. They are made so by these carriers on account of their relative location at the end of a long haul of freight and upon a principle of grouping rates which exists in many portions of the country. If this was all there was in this case it would present no difficulty.

The difficulty in the case arises from the fact that at Grand Rapids the defendant receives its freight from shippers and delivers its freight to consignees at their several places of business by means of a line of drays free of charge, while it does not render a like service for shippers at Ionia. It justifies this upon the ground that its depot is about 2,200 yards from the business portion of Grand Rapids, while its depot at Ionia is only about 220 yards from the business portion of that city; and its competitors at Grand Rapids, the Michigan Central and the Detroit, Lansing & Northern Railroad Companies, have their depots near the centre of the business portion of Grand Rapids. The estimated cost of such delivery by drays would be the same at Ionia as at Grand Rapids, and is two cents per hundred pounds. The claim made, nominally by petitioners, but which, as already appears, is really by the defendant's competitor, the Michigan Central Railroad Company, is that this is equivalent to a cut of two cents per hundred pounds in the transportation rate in favor of Grand Rapids over Ionia, and is an unlawful preference and is an undue and unreasonable prejudice to Ionia. The defendant, on the other hand, attempts to justify it by the exceptional circumstances and conditions at Grand Rapids which do not exist at Ionia, and that it is an expense borne by it in the transportation of its traffic to and from Grand Rapids and rendered necessary there and not rendered necessary at Ionia, and that there is slight competition between Ionia and Grand Rapids, and that this works no prejudice to Ionia or its business, and is no violation of the statute.

The rule that generally prevails in the United States in the absence of some usage to the contrary is that railway companies, as a matter of convenience, deliver their freight to consignees and receive their freight from shippers at their depot warehouses. To this general rule, however, there are many well recognized exceptions. In the case of freight in car-load lots it is often delivered in cars on tracks; or if it be grain, in an elevator; or if it be coal, in bins arranged for that purpose; or sometimes on side tracks on the premises of consignees; or, again, at shipside; and so in many other instances that might be named.

A delivery or receipt of freight such as is here made by the defendant at Grand Rapids is made by railway carriers at other exceptional stations in the State of Michigan and by railway carriers at exceptional stations in other States of the Union. Its origin, as a rule, is found in the fact that one carrier is unable to locate its depot otherwise than at a long distance from the business portion of a city or town, while other carriers have succeeded in establishing their depots near to or in the business portion of such city, or town. The carrier whose depot is thus located at the greater distance resorts to this expensive method of transporting its traffic and equalizing its terminal facilities, as far as this may be done in this manner, with those of its competitors in transporting freight to and from that town or city, as the case may be. Ordinarily other carriers adopt the same method of doing business at such city or town by way of competition. Such a service is not a terminal charge upon the shipper, for no separate charge as such is made against him for it; it is a part of the cost of transportation; it is an expense incurred by the carrier for the transportation of traffic and to equalize its facilities in receiving and delivering freight under exceptional circumstances, and conditions which do not admit of being made with fairness and justice to the carrier and the public in the prosecution of its business in any other manner. Nor is it a preference of one shipper or consignee over another at the station where it is done, because it is done for all alike at that station.

Terminal charges, as such, usually consist of switching, lighterage or trackage charges. Where these exist and are exceptional, as, for example, on shipments by rail from or to the harbor of New York, they are deducted in the shape of an arbitrary from the transportation rate, as part of the cost of transportation, before the balance of the transportation rate is divided among the carriers; and this imposes no additional charge upon the shipper or consignee. At Buffalo such terminal charges, on the other hand, enter into the division of the transportation rate among the carriers. Bridge tolls are in like manner often deducted as arbitraries from the transportation rate before the balance of the rate is divided among the carriers. But at stations generally where terminal charges exist in the shape of switching or trackage charges these are made separable from and in addition to the transportation rate. The watchful eye of the statute is seen, however, in requiring that all these terminal charges and methods, no matter how made, must be reasonable and just. The statute expressly requires that these, as well as the transportation rate, shall be separately stated in the schedules printed by the carrier and posted for public information, and in emphatic terms declares that neither must be made the means of any unjust discrimination or unlawful preference, or undue or unreasonable prejudice or disadvantage to any person, locality or traffic. A charge for storage, where this is made, is also a terminal charge, but this occurs only under exceptional circumstances, and, as such, is a very small item of expense. Freight in car-load lots, as a rule, is loaded by the shipper and unloaded by the consignee, and in less than car-load lots is loaded and unloaded by the carrier free of charge; so that there is no charge made for receiving and handling the freight in loading and unloading.

A transportation expense borne by the carrier alone to enable it to reach the point or points where freight is to be delivered or received, under the exceptional circumstances and conditions named at Grand Rapids in this proceeding, is different from a terminal charge imposed upon the shipper or consignee. Exactly what expenses as distinguished from

terminal charges the exigencies of traffic may require of a carrier for the transportation of its traffic along its line, is dependent upon a variety of considerations. These may and do occasionally vary at different stations where the circumstances and conditions surrounding the business are not of an exceptional character. At a station where the circumstances and conditions surrounding the transportation of the traffic are of a very exceptional character, it is obvious that these expenses may vary still more greatly, and may fairly assume many forms found necessary for the transportation and accommodation of the traffic. The law, however, is plain and inexorable that no carrier can make any such expense a device for an unlawful preference or of an undue or unreasonable prejudice to one shipper over another, or to one locality over another, or to one kind of business over another, either in itself or in connection with the transportation service done.

The method of incurring this transportation expense at Grand Rapids was adopted by the defendant about twenty-five years ago, long before the Michigan Central or the Detroit, Lansing & Northern Railroad had reached that city, and has continued ever since. It did not originate in any competition with them, but commenced, and until the time of their competition with the defendant, continued purely as a transportation expense incurred by the defendant at Grand Rapids. The evidence does not show with particularity whether it originated in the fact that the defendant regarded it as less onerous than to incur the expense of constructing and maintaining an extension of its railroad to a point in the business portion of the city and establishing grounds and buildings there; or to avoid the expense of constructing and maintaining side tracks in various portions of the city; or whether it was deemed a facility that was best under all the circumstances for treating all shippers at Grand Rapids, large and small, equally and alike; or whether it was preferable to the defendant instead of incurring the liability arising from having the freight stored in its warehouses. But it is evident that some or all of these considerations could have had, and doubtless did have, their weight with the defend-

ant in incurring this expense in transporting its freight to and from Grand Rapids. However this may have been at its origin, since the Michigan Central Railroad Company and the Detroit, Lansing & Northern Railroad Company have entered upon active competition with defendant at Grand Rapids and have established their depots in the business portion of that city, at the time to which the complaint relates, it is manifest that this method of transporting its freight on the part of the defendant is one that is vital to enable it to maintain itself in competition with these rival roads for the business of that city. If the defendant was now required to make an additional charge for this service over and above its transportation rate, and in which transportation rate a charge is already made for this service, or, on the other hand, to go no further into Grand Rapids than its present depot, which is a mile and a quarter from the business portion of Grand Rapids, unless it went to the expense of constructing its line into the business portion of the city and of building a depot there, it is clear that it would be greatly prejudiced and would probably lose much of its business, and its rivals, the Michigan Central Railroad Company and the Detroit, Lansing & Northern Railroad Company, would have corresponding advantages over it in receiving and doing business at Grand Rapids. Nor is it certain that it could now obtain the right of way to construct its line into the business portion of the city and build a depot there if it were so disposed. It is not shown that any such change will be beneficial to the business interests of Grand Rapids, but it is a fact that can not admit of doubt that it will be seriously injurious to the business interests of that city.

It seems that for about three months the Michigan Central Railroad Company and the Detroit, Lansing & Northern Railroad Company transported their freight to and from Grand Rapids in the same manner that it is now complained by the Michigan Central Railroad Company that it is done by the defendant. But they abandoned this about twelve months ago; for what cause is not shown; and then petitioners were procured to make this complaint by the Michigan Central

Railroad Company. By this method of business at Grand Rapids no injury or prejudice is shown to have been done to the business of Ionia, and no shipper or consignee at Ionia complains of it or demands that the defendant shall do its business in this way at Ionia. This complaint is in substance and in fact the complaint of the Michigan Central Railroad Company, a rival and competitor of the defendant for the business of Grand Rapids, and the purpose of it is manifest; and this is stated in no spirit of criticism or censure, but as a fact that is deemed of some importance in the case, for it shows that it is not in fact the complaint of a shipper but of a rival and competing line, who alone is to be benefited by a decision against the defendants.

We decided in the matter of the Chicago, St. Paul & Kansas City Railway Company (2 I. C. C. Rep. 231), in effect that in the enactment of the Act to regulate commerce it was the purpose of Congress to protect the public from extortionate rates on the part of carriers, and not to prevent carriers from transporting persons and property at low rates, and that we had no power to require one carrier to raise its rates to suit a rival. The principles of that decision are as applicable here as they were there. Actual and fair competition between carriers for transportation traffic was one of the chief objects aimed at by Congress in the enactment of the Act to regulate commerce. This is apparent not only from the debates but from the section against pooling—section 5 of the Act. This view of the statute has been repeatedly recognized by the Interstate Commerce Commission in its annual reports and in its decisions. Where rival carriers are engaged in active competition for the business of a common point upon their lines, and of necessity make their transportation rates the same upon freight to and from that point, it is wholly immaterial upon a question of the justice and reasonableness of such rates, or whether they comply with the law as to the long and short haul clause, that it costs one of them more than it does the other to transport the freight, or to receive or deliver it, for in every such instance that is more or less the case. In disposing of such a case the Commission

would enter into no such question as that. The two cents per hundred pounds estimated as being expended by the defendant under the circumstances and conditions shown by the evidence in transporting freight to and from Grand Rapids is nothing more nor less than an expenditure of that amount in the cost it incurs in the transportation of its freight. Similar instances may be found in most, if not all, of the States of the American Union, in exceptional cases. The expense incurred in such a case is met by the transportation rate charged, and is covered by that rate. A blow that strikes down the benefits of such competition to the business of Grand Rapids, and to the business of the defendant, and which will benefit alone its rival and competing lines at Grand Rapids, without conferring any benefit whatever upon Ionia, and upon the grounds here claimed, is a result that, in my humble opinion, is not sanctioned by the Act to regulate commerce. The attempt to justify it on the ground that it is the extirpation of either an old or a young abuse is not warranted by the evidence in this proceeding and the statute we are required to administer.

According to my view of the evidence it is an equally unsustained theory to suppose that the long and short-haul clause of the statute is in any respect violated by the matters involved in this complaint. As to the decision in the case of *Martin against the Chicago, Burlington & Quincy Railroad Company and others* (2 I. C. C. Rep. 25), there is no point decided in that case that has the slightest application to this proceeding. Whether the service here complained of is treated by the defendant and its connecting lines as a part of the cost of transportation for which an arbitrary to the extent of two cents per 100 lbs. is retained out of the transportation rate by the defendant, as is the case in the arbitrary deducted from the transportation rate on account of lighterage and switching charges on shipments from New York harbor, or whether, on the other hand, it is treated as a part of the cost of transportation which is divided between the defendant and its connecting lines, as in the case of switching and terminal charges at Buffalo, or whether it is a

transportation expense tath is borne solely by the defendant, we have no means of knowing from the evidence; but in either event it is wholly immaterial. It is enough that it is covered by the transportation rate and is legitimately made such and that the shipper or consignee in either event pays it as covered by the transportation rate, and that the entire transportation rate is no more than is charged by a rival and competing line on similar shipments from the same points of origin to the same destination. It is a large expense incurred by the defendant from the necessity of the case only, and so it will be found to be at every point where it is done, and in every such instance is part of the cost of transportation, and not the giving of any special rate, for it is nothing of the kind; nor as cutting the rate, for it is not that; nor as doing a service for which there is no compensation, because it does not come within that category. Carriers incur such large expenses just as they incur extra expense to tunnel mountains, hew down high grades, or build long bridges to benefit their own business, and not as a preference of the business of some over that of others. But it is not every particular expense that the carrier incurs in the cost of transportation for which he is adequately paid by the transportation rate charged. A measurement of rates upon any such standard as that alone would be a fallacy, and has never been done in any instance by the Commission.

If the expense incurred in the service rendered by the defendant in the transportation of freight to and from Grand Rapids here complained of is a violation of the statute, at all, it is because it is in contravention of the first subdivision of section three of the Act to regulate commerce. That subdivision is as follows:

“That it shall be unlawful for any common carrier subject to the provisions of this Act to make or give any undue or unreasonable preference or advantage to any particular person, company, firm, corporation, or locality, or any particular description of traffic, in any respect whatsoever, or to subject any particular person, company, firm, corporation, or locality

or any particular description of traffic, to any undue or unreasonable prejudice or disadvantage in any respect whatsoever."

Any consideration of it upon the evidence in this proceeding to which the statute applies could come under this section and no other. To be a violation of this section the preference or advantage made or given by the carrier must be "undue or unreasonable," or the prejudice or disadvantage caused by the carrier must be "undue or unreasonable." Whether in either instance it is "undue or unreasonable" must depend upon the "circumstances and conditions" under which it is done, and when these are brought out into the light of evidence, as provided by the statute, they will always show with unerring certainty whether or not the statute has been violated; for the statute in this section, as well as in all its provisions, recognizes the rights of different localities, shippers, and consignees, as well as the rights of the carrier.

I proceed, therefore, to consider this complaint, in connection with what has already been stated, as if it had been really and actually made by a shipper or consignee at Ionia, instead of by the Michigan Central Railroad Company, a rival and competing line with the defendant for the business at Grand Rapids. If Ionia can successfully assert this claim on the ground that the defendant transports freight to and from Grand Rapids in the manner here complained of, then it may be the case, and probably will be, that other cities and towns in the State of Michigan along defendant's line will assert the same claim and on the same grounds. If a rule of this kind is to be established along defendant's line, then it will probably be taken up next by cities and towns in the State of Michigan along the lines of other railroads in that State on the same grounds. These grounds, in brief, are that the carrier incurs more expense in the cost of transportation, or in the receipt or delivery of freight at some other places along its line than at their station, and therefore ought to charge correspondingly higher rates at those places or else be guilty of unjust discrimination, or of an undue and unreasonable prejudice, or not do the business

The result is then reached of making the expense incurred by the carrier as part of the costs of transportation at a city or town where exceptional conditions and circumstances exist; as, for instance, a depot situated at a long distance from the business part of the town or city, a test, and the rates paid by that town or city higher in proportion to this condition of affairs, and subordinate to those of another town or city where the depot of the carrier is in the heart of the business part of that city. Such a construction of the statute, if entered upon, can not be confined to the State of Michigan. If it is an unlawful preference or an undue or unreasonable prejudice in the State of Michigan, or a violation of section four of the Act to regulate commerce in the State of Michigan, then it must be so wherever such transportation expense is incurred without increasing the rates in other States, and that it does exist in other States without any complaint from shippers thus far is a fact too well known to admit of any doubt and is conceded by the evidence. We have heretofore said much, and rightly, that rates must be so fairly and impartially adjusted as not to unjustly subordinate the rights of country towns and way stations to "trade centres," but names in this instance have no terrors for me, and I am prepared to say that it is equally true that the just and rightful necessities of commerce at "trade centres," so called, should not be unjustly subordinated to unfounded demands on the part of country towns and way stations. They are all equally and alike under the protection of the law.

If the business of Grand Rapids is to have this extra burden put upon it because Ionia demands it, then we are confronted with the result that one locality, distant thirty-three miles from another, between which the competition is slight, and in regard to which there seems to be no conflict of interest whatever, so far as the evidence shows, is really brought to suffer a serious prejudice in its business on account of such demand alone. Such a view of this matter ignores the business interests of Grand Rapids; and while these are entitled to no higher consideration than those of Ionia, they occupy exactly as high ground. The rights of the defendant carrier are also to be considered as well as those of the pub-

lie at each of these stations. There is no law that requires or provides that even its methods of business in the receipt, delivery or handling of freight must necessarily be the same at Ionia as at Grand Rapids. The defendant is left by the law to locate its depot at such place as it may select at each of these cities. The exigencies of its traffic, as shown by the evidence, are different at each of these cities. These exigencies of its traffic the defendant is called upon to meet and to provide for, exercising its own discretion except that it must not violate the statute by any unlawful preference, unjust discrimination or undue or unreasonable prejudice. The circumstances and conditions surrounding the receiving and delivering of freight at defendant's depot in Grand Rapids are exceptional. It is because of this fact that the defendant incurs this large expense in transporting freight to and from Grand Rapids for which it receives only the same transportation rate as its competitors. It is evident that the defendant would incur no such expense as this at Grand Rapids but for those exceptional circumstances and conditions; and it therefore rests upon this ground alone. At Ionia no such exceptional circumstances and conditions are shown to exist. The facts constituting these substantially different circumstances and conditions have already been stated and it is not necessary to repeat them. They emphasize the fact and show the reason why no demand of this kind has ever been made at Ionia. They show that no such necessity exists for it at Ionia, as at Grand Rapids, and that there are no exceptional circumstances and conditions existing at Ionia such as would make it a duty of the defendant to incur this large cost of transportation at that city such as could or ought to be enforced by legal procedure.

One feature of our country is that it is settled by distinct communities in different localities, and these are frequently found along the line of different railway carriers. A rule that would deny one of these a fair and lawful service that is found necessary for the business under the peculiar circumstances and conditions by which it is surrounded, because another and distant locality, differently situated and standing in no like need of any such service on the part of the

carriers, demands it, would be to subordinate the needs of one locality to those of another—a result that is not sanctioned by any provision in the Act to regulate commerce. A construction of the statute that lays down any such rule is, in my opinion, entirely fanciful, and will be attended by much harm to many localities, as well as to many carriers, without any beneficial results to the public.

Another objection made to the lawfulness of this service as rendered at Grand Rapids is that Grand Rapids and Ionia, as to transportation rates, are in the same group and therefore should be treated by the carrier as to receipts and deliveries of freight as if they were only one station. Because the transportation rates are the same from the distant points of origin of the freight in the eastern cities to Ionia and Grand Rapids on account of their being grouped, as already stated, it does not follow that the terminal services, facilities and transportation expenses of the carrier at each of these grouped stations should be the same, just as if the two were located at the same point. They are, in fact, thirty-three miles apart, and, as the proof shows the circumstances and conditions are substantially different in the transportation of freight on the part of the defendant at each of these two cities. Although it is estimated that the cost of delivery at each of them would be the same, namely, two cents per hundred pounds, from the depots to the business houses, yet it does not follow that the cost of rendering the transportation service on the part of the carrier for which the transportation rate is charged is the same at each city, or that the circumstances and conditions that require extra expense on account of the transportation of freight to and from one require it also at the other; nor is it a controlling fact in this case that the mere cost of receiving or delivering the freight by the carrier would be the same at each city. If it is, as shown by the evidence in this proceeding, a necessary and proper expense to be incurred by the carrier in doing the business of one and not that of the other, that is a controlling fact, and the question is presented whether it is in violation of the Act to regulate commerce.

The grouping of rates in different districts or areas of ter-

ritory is a method that has been resorted to by railroads from their earliest history for the purpose of giving to the public in such districts or areas of territory rates that were approximately equal and in a general way relatively fair. It has received the sanction of a recent English statute, 51 & 52 Victoria, chapter 25, section 20. But this is held to be a mere statutory recognition of what has long been the law. (MacNamara on Law of Carriers, pp. 345-6, and authorities cited.) It can of course be carried too far and in that way be made the means of giving undue preference, but within reasonable and proper limits practical experience has demonstrated that it occupies a most useful field in railway operations and is quite as beneficial and desirable to the public as it is to the railroads. The limit would seem to be reached in this way for business when some shippers or consignees are really damaged by the rates afforded while others are correspondingly benefited. The Interstate Commerce Commission has repeatedly recognized this method of doing business, and in several instances where the points grouped were much further apart than Grand Rapids and Ionia. (*La Crosse Manufacturers' and Jobbers' Union v. The Chicago, Minneapolis & St. Paul Railway Company*, 1 I. C. C. Rep. 629. *In the Matter of the Tariffs of the Columbus & Western Railway Company*, 1 I. C. C. Rep. 628, 1st Annual Report of the Interstate Commerce Commission. See 1 I. C. C. Rep. 316. *The Imperial Coal Company et al. v. The Pittsburgh & Lake Erie Railroad Company et al.*, 2 I. C. C. Rep. 618.)

It has never been supposed that the grouping of rates made them mathematically and exactly equal in accordance with the service performed by the carrier in bringing the freight to or carrying it from all shippers within the group; on the contrary, occasional inequalities of this character of no substantial consequence may be seen; but the merit of it consists in the fact that the rates are approximately equal and are relatively fair and just, and perhaps more nearly so than could be arrived at in any other way. The only way to make rates mathematically equal is by the rule of the rate per ton per mile according to distance which from many

causes is found impracticable. The rule that the transportation rates are the same to every station in the group is one that is plain, simple and easily understood by all, as well as the business reasons upon which it is based. But it is a novel doctrine, and one that to my mind will be fraught with many difficulties and embarrassments to carriers and will result in serious injury to shippers and consignees, without any benefit to the carriers or the public, if the rule is to be announced by the Interstate Commerce Commission that the cost of transportation or even the terminal expenses incurred and terminal deliveries and receipts of freight as made by carriers must be exactly, or even substantially, the same at every station included within the group because the transportation rates are the same at each of these stations. When that is done in one instance, as is here proposed, I can readily see how and why the carriers would generally abandon the grouping system, and that would result in a raising of rates at these points where grouped rates now exist, and widespread general dissatisfaction on the part of the business interests served by the carriers. It will also result in many adjustments of rates under the long and short haul clause of the statute which have been made by carriers and which can not well be made in any other way being abandoned by them, and, as a result of that, numerous embarrassments, complaints and general dissatisfaction.

It will expose the Commission, the public and the carriers to the hazard of turning loose and losing the benefit of a great deal that has practically been accomplished in the administration thus far of the Act to regulate commerce. We had better, in my opinion, hold on to the practical results thus accomplished and let the public have the benefit of them instead of losing them in an effort to correct inequalities in transportation expense or in the terminal expenses and terminal deliveries and receipts at different stations within a group, when these as occurring at one station are not shown to operate any prejudice or injury to shippers or business at another station within the group and are easily and fairly accounted for by the disadvantage under which the carrier

labors of having its depot at one station located a long distance from the shippers and consignees at that station, while at another station its depot is located near the business it serves. If the circumstances and conditions being substantially different at the different stations in a group, so far as these relate to terminal expenses and deliveries, are to be considered of no consequence; and if, without regard to these different conditions and circumstances, the carrier is to incur the same measure of terminal expenses or charges at one station as another in the group, or to adopt the same methods of terminal delivery or receipt of freight at each station, or else to be considered as cutting the transportation rate, or of unlawful preference to the extent of the difference in the terminal expense or charge at one station as compared to another, then we are applying one rule as to the transportation rate under the statute by giving, as the statute directs, weight to "substantially different circumstances and conditions" where these are of controlling importance in the transportation rate, and applying a wholly different rule to terminal expenses in delivery and receipt of freight where the circumstances and conditions are equally substantially dissimilar.

Nor is there any evidence whatever in this proceeding which shows or tends to show that this method of business on the part of the defendant is either a "special rate, rebate, drawback or other device" made or intended to be made for the purpose of charging, demanding or collecting a greater or less compensation from any person or persons "for doing for him or them a like and contemporaneous service in the transportation of a like kind of traffic under substantially similar circumstances and conditions" as defined by section 2 of the Act to regulate commerce. It certainly is not a "special rate," because it is a published general rate at Grand Rapids in the tariffs of the defendant. It has no feature of a "rebate" because there is nothing refunded directly nor indirectly to the shipper. Nor has it one single element of a "drawback," which, in substance, is the same as a "rebate."

The question then arises whether it is a "device" within the meaning of section 2 of the Act to regulate commerce. From the connection in which the word "device" occurs in section 2 of the statute it is evidently used in a criminal sense, because it imputes to the carrier guilty of it conduct which is violative of law. It is used in the statute in the sense of being a crafty, shifty stratagem, project, scheme, design, invention, or contrivance to give one person an unlawful preference over another for doing on the part of the carrier "a like and contemporaneous service in the transportation of a like kind of traffic under substantially similar circumstances and conditions." The evidence in this proceeding shows without conflict that this method of doing business on the part of the defendant originated about twenty-five years ago and has been continued ever since. This evidence shows that all shippers at Grand Rapids, equally and alike, have the benefit of it, and that none of them are preferred over others. All the facts shown by the evidence in relation to the origin and continuance of this method of business on the part of the defendant are fully stated in a preceding part of this opinion and it is unnecessary to repeat them here. They utterly negative the idea that this is a "device" invented by the defendant for the purpose of avoiding the law or preferring one shipper over another, either at Grand Rapids or elsewhere on its line. They show that this method of business on the part of the defendant originated in good faith and has continued in good faith up to this time.

The intent with which a "device" is invented and perpetrated as declared and denounced by the statute is the very essence of the Act. I understand it to be a cardinal rule of the law that a criminal act in violation of law, such as this would be if it were really a device intended, designed, or perpetrated for the purpose of violating the second section of the Act to regulate commerce, can never be imputed to a party where all the facts and circumstances show that it is consistent with honesty and good intention. Again, it is equally as well settled a rule of law in a matter of this kind,

that if, upon all the evidence, there is an hypothesis that the act done was intended by the defendant in a criminal sense or in violation of law, and, on the other hand, that there is another hypothesis, equally reasonable and warranted by all the evidence, to the effect that the act done was not done for the purpose of violating law or in any criminal sense, then any tribunal which is to determine the question must proceed upon the rule that the act done was not done in a criminal sense or with any intent to violate law.

But aside from the fact of intent, the question arises, does it violate the statute ; because if such is its effect then it can not stand. The grounds upon which it does not violate the statute have been fully set forth in a preceding part of this opinion and it is unnecessary to repeat them here in all their details. They bear quite as much upon the subject as to whether it is a "special rate, rebate, drawback, or device" as they do upon the question of whether it is a violation of the long and short-haul feature of the fourth section of the Act to regulate commerce, or whether it is a violation of the third section of that statute. They show that it is not "a like and contemporaneous service done under substantially similar circumstances and conditions" with the service rendered by the defendant in transporting freight to and from Ionia, but, on the contrary, that it results from circumstances and conditions which are substantially dissimilar at Grand Rapids to what they are at Ionia.

That it is not in violation of any public policy of the United States is equally true. The public policy of the United States is found in its laws as enacted by the law-making power or adopted by it, or in cases confided to the President and indicated in his proclamations, or to one of the great departments of the Government and established by its regulations. But if the statute which we are required to administer does not indicate what the public policy is to be upon any given point, then I do not understand that we have authority by any mere opinion of our own to create and declare what shall be the public policy upon that subject, and that an innocent and proper business method of a carrier

is in violation of the public policy that we have thus created and defined. Whatever public policy there is bearing upon this subject must be found in the Act to regulate commerce, and if it is not there, then it does not exist.

As to rates the only public policy indicated by the Act to regulate commerce is that these shall be reasonable and just, published and open alike to all, without unjust discrimination for a like and contemporaneous service in the transportation of a like kind of traffic under substantially similar circumstances and conditions; that there shall be no undue or unreasonable preference or advantage to any person, company, firm, corporation, or locality, or any particular description of traffic, nor shall there be any undue or unreasonable prejudice or disadvantage in any respect whatsoever to any person, company, firm, corporation, or locality, or any particular description of traffic; that a carrier shall not discriminate between connecting lines in receiving, forwarding, and interchanging freight; and that it shall be unlawful for a common carrier to charge or receive any greater compensation in the aggregate for the transportation of passengers or like kind of property under substantially similar circumstances and conditions for a shorter than for a longer distance over the same line in the same direction, the shorter being included in the longer distance. The statute has left no doubt on the subject as to the public policy thus declared, because it is plainly expressed in the language of the statute. Whether a common carrier, subject to the provisions of the statute, has violated it in any of these respects depends upon the facts of each particular case, and severe penalties are provided in the event there is such a violation.

A feature of this statute that is manifest even upon a casual reading is that it expressly defines in its own language any act that shall be a violation of its provisions. To violate section one in any charge made for the service rendered or to be rendered in the transportation of passengers or property or in connection therewith, or for the receiving, delivering, storage, or handling of such property, such charge must be unreasonable and unjust. To violate section two there

must be a special rate, rebate, drawback, or other device by which a greater or less compensation for any service rendered or to be rendered in the transportation of passengers or property subject to the provisions of this Act by a carrier for doing a like and contemporaneous service in the transportation of a like kind of traffic under substantially similar circumstances and conditions which is defined to be unjust discrimination. To violate the first clause of section three a common carrier subject to the provisions of the Act must make or give an undue or unreasonable preference or advantage to some person, company, firm, corporation, or locality, or particular description of traffic, or must subject some person, company, firm, corporation, or locality, or particular description of traffic to some undue or unreasonable prejudice or disadvantage. To violate the second clause of section three, a common carrier, subject to the provisions of the Act, must refuse, according to its powers in that respect, to afford all reasonable, proper and equal facilities for the interchange of traffic between its respective connecting lines, and for the receiving, forwarding, and delivering passengers and property to and from such lines and those connecting therewith, or must discriminate in its rates and charges between such connecting lines. To violate section four, the carrier must charge or receive a greater compensation in the aggregate for the transportation of passengers or the like kind of property under substantially similar circumstances and conditions for a shorter than for a longer distance over the same line, in the same direction, the shorter being included within the longer distance. To violate section six, with reference to the printing and posting of schedules of rates, fares, and charges, the carrier must fail to comply with some one of the express requirements of this section. There are, of course, other provisions of the Act regulating and defining the duties of carriers, but it is unnecessary to refer to these as they have no bearing whatever upon the questions involved in this proceeding.

The rule of statutory construction is well settled that when a statute thus defines in express terms what shall constitute a

violation of its provisions, and makes such violation penal, this definition is conclusive upon every tribunal whose duty it is made to enforce the statute. Such tribunal can add no terms of description to the definition so made by the law-making power, and can take no terms away from that definition. That definition expresses the will of the legislature and it can not be enlarged or reduced by construction. When the will of the legislature is plainly expressed, there is no room for construction, and it must be obeyed and enforced as expressed.

The words "under substantially similar circumstances and conditions," found in the second section of the statute, are words of controlling import, and so are the same words found in section four. It is not enough that the circumstances and conditions should be similar, but they must be substantially similar. So in section 3 the words "undue" or "unreasonable" are words of controlling import. It is not enough under this section that the preference or advantage, or prejudice or disadvantage, should exist, but in each instance it must be "undue or unreasonable." Congress in each of these sections has used apt and well-selected words to define what shall constitute a violation of each of these sections.

Every word in a statute must, if possible, be given some operation, but this is the more true of words which deal with the substance of things, and which are of controlling import. By giving to the words "under substantially similar circumstances and conditions" the field of operation they occupy in this statute, the carrier is enabled to adjust its business methods to its traffic in such way as that it may properly and fairly serve the public under the various exigencies of transportation and commerce without injustice to shippers or localities and without crippling its own legitimate business. The same is true of the words "undue or unreasonable" as they occur in the first clause of section three. One shipper may obtain better or larger cars than another from causes that are purely accidental or without any intention to give him a preference. For illustration, because he applies first for cars, and the carrier may furnish them to him without knowing that the other

shipper will come for cars, and there would be no "undue or unreasonable advantage or disadvantage or preference or prejudice" about that. So it might be also in the case of scarcity of cars, if the carrier should furnish freight cars to one shipper who comes first and applies for them without his knowing that the other shipper might later in the day apply for cars. So it would be where a carrier, for business reasons of its own, has a larger or more expensive depot at one station than another, or a depot nearer to the business portion of a city or town on its line than another, or has an elevator at one station and no elevator at another, or a cotton compress at one station and no cotton compress at another, or finds itself in a condition that its depot is so far from the business portion of a city or town on its line that in order to properly serve all of its patrons at such city or town it is obliged to use wagons in carting its freight to and from its depots without any separate charge being made for this specific service, not as a "device" to prefer that city or town over another, but as a necessity of its business and as a part of its transportation expense covered by its transportation rate. There are many other instances that readily occur to the mind, but it is unnecessary to specify them. In none of these instances named would it follow that there was "undue or unreasonable prejudice" or "undue or unreasonable preference," or that it was done as a "device" to give one shipper or locality an advantage over another, or to place one at a disadvantage as compared to another, or to subject one and not the other to prejudice or disadvantage or to do for one a greater service for a less compensation than for another "under substantially similar circumstances and conditions." To be "undue or unreasonable," the preference or advantage, the prejudice or disadvantage, must not be of a doubtful character, but it must be unmistakable, which character is indicated by its being "undue," and it must be without lawful cause or ground for its existence, which of course renders it "unreasonable."

As the expense incurred by the defendant at Grand Rapids in the delivery and receipt of freight is a mere transportation

expense involved in the cost of transportation for which it makes no separate charge, but which is covered by the transportation rate charged, it is no more required by the statute to publish this in its tariffs than it is to publish any other transportation expense or item in the cost of transportation that it incurs in transporting freight to and from Grand Rapids over its line.

IN THE MATTER OF THE APPLICATION OF F. W.
CLARK, GENERAL FREIGHT AND PASSENGER
AGENT OF THE SEABOARD AIR LINE.

Heard and decided April 23, 1890.

1. Through rates in interstate traffic are the subject of agreement among carriers who transport the freight, and for their existence are dependent upon such agreement; and one of the features of such rates usually is that each carrier receiving the freight pays the charges upon it of the carrier delivering it.
2. Where a line of steamships, for example, plying between New York and Wilmington, N. C., make a through rate from New York *via* Wilmington and the Carolina Central Railroad to interior points, by adding the steamer rate to the local tariff rate of the railroad to the interior points, there being no agreed through rates for such freight between the steamship and rail lines, the rail carrier, when the freight is tendered to it at Wilmington, is under no obligation to pay the rates earned by the steamer in transporting the freight from New York to Wilmington, but may decline to do so, leaving the steamship and the shipper to settle the matter of the steamship's charges before the carrier takes the freight and transports it to the interior point.

MEMORANDUM.

REPORT AND OPINION OF THE COMMISSION.

BRAGG, *Commissioner* :

In this proceeding the Commission has received an application from F. W. Clark, General Freight and Passenger Agent of the Seaboard Air Line, as follows :

“Will you kindly advise me if a line doing business from an eastern Atlantic port has a right to publish and operate rates from the said eastern ports, *via* a southern port, based upon whatever rates the steamer line may choose to make in connection with the local rates of a railroad from the southern port to the interior; and if the railroad line from

the said southern port would, under the Interstate Commerce Law, be compelled to operate said rates, published and quoted without the consent of the railroad leading from the said southern port to the interior?

“Our attorney is of the opinion that we would have a right to decline to pay charges between the eastern and the southern port, unless the through rate is made up upon an equitable and agreed basis, looking to the maintenance of rates agreed upon and established for all of the said railroad’s connections.

“To be more explicit, has a steamship line from New York to Wilmington, N. C., a right to make rates from New York to a point on the Carolina Central R. R. without the consent of the said Carolina Central R. R.? And would the said Carolina Central R. R. be forced to pay the charges of the steamer line between New York and Wilmington, in case the said steamer line should make total rates between the points named, without any regard to the wishes of the Carolina Central R. R.? We have regular established rates *via* Portsmouth and *via* Richmond, made up in accordance with the Interstate Commerce Law, which we desire to have maintained.”

It is indispensably necessary in interstate traffic that the consent of each of several lines over which freight is to be carried should be had in the establishment and operation of what is called “through rates.” Such rates are the subject of agreement, and for their existence depend upon agreement. One of the features of such rates is usually that each carrier receiving the freight pays the charges on it to the carrier delivering it.

Assuming the facts to be true as stated in this application, it appears that there is no agreement between the Carolina Central Railroad Company and the steamship line from New York to Wilmington as to any through rate upon freight. This being true, the railroad carrier could only be required to carry the freight from Wilmington to the interior at its local, published, tariff rates, and would be under no obliga-

tion whatever to pay the charges of the steamer line between New York and Wilmington.

The subject of the reasonableness of the local tariff rates of the rail carrier is not involved in this proceeding, and is therefore not passed on by the Commission.

At the hearing and decision of this case the Chairman was absent because of illness, and did not in any way participate.

CHARLES ELVEY, CLAIMANT v. THE ILLINOIS CENTRAL RAILROAD COMPANY, DEFENDANT.

Complaint filed July 8, 1889. Decided May 9, 1890.

1. Where a carrier by its published general tariffs charges the general public from and to all points upon a large portion of its lines certain rates upon a class of freight and at the same time publishes and puts into force a special tariff by which it charges a class of persons named, from and to the same points on its lines, less than one-half in amount of the rates on the same class of freight that it charges the general public in its general tariffs, such a discrimination is unjust and is violative of the Act to regulate commerce.
 2. Such a discrimination can not be sustained upon the ground that the special tariffs is made to aid "emigrants" in moving from one State to another where land is cheap and to develop a sparsely settled country and to build up business along the carrier's lines, and upon the supposition that this constitutes substantially dissimilar circumstances and conditions to what exists when similar services are rendered by the carrier for the general public.
 3. A shipper to whom, as an emigrant, is accorded the rate provided by the special tariff, for example, sixty dollars on a car-load of freight weighing 20,000 pounds from Chicago, Illinois, to Hammond, Louisiana, a distance of 863 miles, in December, 1888, and in May, 1889, makes return shipment of same freight from Hammond, Louisiana, to Chicago, Illinois, under the general tariffs of the carrier, there being no other tariffs on north-bound freight between these points, and is charged therefor \$122.00 per car, complains of an unjust charge.
- Held*, that as the carrier in each instance charged only its open published rates and no evidence is offered to show that the rates in either instance are unjust and unreasonable, and as the general tariffs of the company have long been in use and published and open to the public, and the special tariff has been but recently issued and is open to a certain special class only and is unlawful, that the general tariffs afford a better standard of what are reasonable and just rates than the special tariff, and that the shipper in such case has not been injured in paying less than one-half the amount charged the general public on the first haul and only what was charged the general public on the second haul.
4. The carrier is ordered and notified to cease and desist from further operating the special freight tariff.

MEMORANDUM.

REPORT AND OPINION OF THE COMMISSION.

BRAGG, *Commissioner*:

An informal complaint was made in this proceeding by the claimant to the effect that an unjust charge has been made by the defendant, and as to the material facts involved in the proceeding there is no dispute. These facts, elicited after considerable correspondence with the parties, show that on the 17th day of December, in the year 1888, the claimant shipped by the line of the defendant from Chicago, Illinois, to Hammond, Louisiana, a distance of 863 miles, a car-load, weighing 20,000 pounds, of household goods and stock, including three ponies, for which service a rate of \$60.00 was charged and paid. Afterwards on the 21st day of May, 1889, identically the same freight excepting two of the ponies was sent by return shipment by claimant over the line of the defendant from Hammond, Louisiana, to Chicago, Illinois, and then the rate charged by the defendant for the service was \$122.00.

The grounds upon which this difference of rate is justified by the defendant are thus stated by its general manager, E. T. Jeffrey: "It seems that for the purpose of stimulating immigration to Louisiana where land is cheap and population sparse, we have had in force a low rate on emigrants' movables. Copies of the way bills enclosed herewith will show that the complainant, in December last shipped a car of household goods and stock, including three ponies, from Chicago to Hammond at a rate of \$60 for 20,000 pounds. This was under the low emigrant tariff put in force by the company for the purpose above set forth. In May, 1889, the complainant shipped from Hammond to Chicago a car of household goods, including one pony, at a charge of \$122 for 20,000 pounds. The distance from Chicago to Hammond is 863 miles. The service performed by the carrier is substantially the same in the south bound as in the north bound shipment. There is no other reason to present for your consideration in this case than the dissimilarity of circumstances

and conditions growing out of the desire to settle the unoccupied lands in Louisiana, and thus add to the prosperity of that section of the country and thereby increase the volume of traffic and revenue on the line of our road.

"We do not want to work an injustice or hardship upon any one, or upon any interest or locality, and if you think what we have done is wrong, we will correct it, and change our tariffs to conform to your better and more disinterested judgment. My own impression is that it is not only good business policy, but also in a broad sense, good statesmanship for the government to permit the channels and arteries of commerce and traffic to develop and settle undeveloped and unsettled sections of the country, even though it be necessary in so doing to offer what seem to be advantages and preferences which are not afforded nor required under other circumstances and conditions.

"If you think we have made an error, I trust you will consider that we have meant to do right, and will, therefore, not censure us for what we have done, as we will willingly and cheerfully change our rates if need be, and satisfy in this particular case the complainant, if it appears to you that such satisfaction should be accorded.

"I enclose the special emigrant tariff from all stations in Illinois, Indiana, Wisconsin, Iowa, Minnesota and Dakota, to our southern points, a duplicate of which is on file with the Commission."

We have examined the tariff that is referred to. It purports to be and is an elaborate, voluminous, and carefully prepared tariff, denominated "Emigrant Freight and Passenger Rates from all Stations in Illinois, Indiana, Wisconsin, Iowa, Minnesota, and Dakota to Jackson, Tennessee, Aberdeen, Mississippi, Jackson, Mississippi, Hammond, Louisiana, and other stations on the Southern Division" of the Illinois Central Railroad Company. We find from examination of this tariff that the freight rate for emigrants for property of the class involved in this complaint per car-load of 20,000 pounds from Chicago to Hammond, Louisiana, south bound, is \$60.00, while the freight rate on such a car-load for shippers, not emigrants, from Chicago to Hammond,

Louisiana, between the same points, south-bound, for the same property and service, according to the general tariff of the Illinois Central Railroad Company, is \$122.00 per car. The rate is \$122.00 per car of 20,000 pounds for the same kind of freight and service by the general tariffs of the company from Hammond, Louisiana, to Chicago, north bound. Proportionally much the same relative differences in rates are made on shipments of freight for emigrants by this special emigrant tariff from all stations in Illinois, Indiana, Wisconsin, Iowa, Minnesota, Dakota, and all other stations on the Southern Division of the Illinois Central Railroad Company. The Southern Division of the Illinois Central Railroad Company embraces its lines south of Cairo extending to New Orleans and various other points in the States of Kentucky, Tennessee, Mississippi, and Louisiana.

The question presented is whether under the Act to regulate commerce, such a discrimination as this is lawful. In the case of *Savery & Co. v. The New York Central & Hudson River Railroad Company et al.*, 2 I. C. C. Rep. 356-9, we had occasion to consider the passenger rates of transportation charged immigrants, the charges for their baggage, and the subject of whether the passenger transportation for them was suitable or not. In this emigrant tariff of the Illinois Central Railroad Company there seems to be no discrimination in passenger rates between what is charged by it, and by the general tariffs of the company, from and to the points named, and in this respect it complies with the statute. In Savery's case there was no claim that household goods and freight of "immigrants" should be hauled at less rates than other freight of the same kind for other persons; and in point of fact the freight rates and classification of the Trunk Line Association, which were there involved, made no such distinction. According to their classification and freight rates a car-load of household goods could not and would not be transported any more cheaply over their lines for "immigrants" than for any other class of persons. Such a difference as is here made in emigrant freight rates on the Illinois Central Railroad, according to this tariff, and the freight rates charged other persons in the same localities from and

to the same points and for the same service, who are not "emigrants," is clearly a discrimination that is violative of the Act to regulate commerce and can not be sustained.

The governing motives of the company that prompted it in making this emigrant freight tariff were evidently such as are stated by its general manager. Its purpose in making this tariff was to afford cheap rates to "emigrants" from one portion of the country to another, in order to develop a sparsely settled country, where lands were cheap, and to build up the business along its line, and not to violate the statute. It is a tariff that would, of course, benefit the emigrants, the sparsely settled country and the defendant, but it overlooks the rights under the law of other shippers of similar freight from and to the points named who are the neighbors of these emigrants, and it discriminates against them, and in this respect is directly in conflict with the Act to regulate commerce. It does not appear that there is any such dissimilarity of circumstances and conditions in the service performed as justifies these differences in rates.

No evidence has been offered to the effect that either of these tariffs charge unreasonable rates for the services performed for complainant in these matters of which he has complained. His theory in submitting the case for our consideration seems to be that as here are two tariffs from and to the same points, under one of which, south bound, he was charged \$60.00 per car, and on the other, north bound, he was charged \$122.00 per car for the same freight, that therefore the greater charge is wrong to the extent of the difference between the two. But this does not necessarily follow. The charge of \$122.00 per car of 20,000 pounds for 863 miles is the general tariff of the company, has long been in use, is open to the public generally, is a rate of 61 cents per 100 pounds, or one and four-tenths mills per ton per mile for the transportation of this freight for this distance, while the charge of \$60.00 per car is a special tariff made for a particular class of persons, not open to the public generally, is a rate of about 30 cents per 100 pounds, or slightly less than seven mills per ton per mile, and has very recently been put

into effect under what is claimed are exceptional circumstances and conditions which as we have seen do not justify this special tariff under the statute. And assuming, as we must do for the purposes of this proceeding and upon the case as here presented, that the general tariff is the one which furnishes a better standard as to the reasonableness and justness of the rates charged by it, than the special tariff, and as the special tariff is one that for the reasons stated is unlawful, and as the complainant in each instance was charged the published tariff rate of the defendant, it would seem to follow that the complainant has not been injured, but that on the contrary he was charged less than he ought to have been charged in the south bound shipment, and that he was only charged what the general public was charged in similar shipments of freight on the north bound shipment.

It results from what we have stated that the claim of the complainant against the reasonableness and justice of the rates charged him must be denied, without prejudice to his further pursuing his claim if he may so desire. And the defendant having submitted its said special emigrant freight tariff to the Commission for its judgment and decision, as a defense in this proceeding, and the same having been fully considered by the Commission, it is now ordered by the Commission and notice is hereby given to the defendant, the Illinois Central Railroad Company, to cease and desist from further operating its said special emigrant freight tariff from and to the points therein named, because said tariff is in violation of the Act to regulate commerce.

**J. B. PANKEY v. THE RICHMOND & DANVILLE
RAILROAD COMPANY AND OTHERS.**

Complaint filed February 15, 1890. Decided May 9, 1890.

1. When a shipper of freight gives directions to the freight agent of the initial carrier at the point of shipment the particular route by which the freight shall be shipped to destination, it is the duty of the freight agent to make such notations on the way-bill as will reasonably and properly carry the freight by such particular route to destination.
2. A shipper at Troupe, Texas, directs the freight agent of a carrier to bill his freight from that point to Fort Lawn, South Carolina, *via* Vicksburg, Jackson, Meridian, Birmingham, Atlanta, Augusta, and Columbia. The freight agent simply inserts in the way-bill that the destination of the freight is Fort Lawn, South Carolina, "*via* Vicksburg," in consequence of which the freight at Vicksburg is billed to Atlanta and consigned to the Richmond & Danville Railroad Company, by which it is carried to Fort Lawn without being carried by way of Augusta and Columbia, and as a result of this the shipper is compelled to pay eighty-six cents more for the carriage than if it had been billed *via* Augusta, as directed by the shipper, the rates by all rail lines from Vicksburg to Augusta being the same, and not the same from Vicksburg to Fort Lawn *via* Atlanta:
Held, That in this the freight agent failed to do his duty; he should have made a notation on the way-bill *via* Vicksburg and Augusta; and upon request the initial carrier should refund to the shipper the amount of this overcharge occasioned by the oversight of its freight agent.
3. If, on the other hand, the shipper at Troupe, Texas, had given the freight agent no directions whatever as to the particular route by which the freight was to be sent forward to its destination at Fort Lawn, South Carolina, but had simply left it to the freight agent to select the route for him, as is frequently done by shippers in such cases, then, in that event, in selecting such route for the shipper, it would have been the duty of the freight agent to have forwarded the freight by the best and cheapest route for the shipper, so far as the freight agent knew, or was informed, and to have made such notations on the way-bill as would reasonably have carried it by that route, for in doing that service he would have been acting as the agent of the shipper as well as of the company.

MEMORANDUM.

REPORT AND OPINION OF THE COMMISSION.

BRAGG, *Commissioner* :

The complainant in this proceeding is a school teacher, and he makes an informal complaint to the Commission, in substance, to the effect that in the latter part of the year 1887 he ordered his library, consisting of five boxes of books, and weighing two hundred and seventy pounds, to be shipped, all rail, from Troupe, in the State of Texas, to Fort Lawn, in the State of South Carolina, by way of Shreveport, Monroe, Vicksburg, Jackson, Meridian, Birmingham, Atlanta, Augusta, and Columbia, South Carolina, to Fort Lawn. These books were first class freight. A bill of lading was sent to him by the railroad agent at Troupe, but this did not state the amount of the rates to be charged. When the books reached Fort Lawn the bill of freight charges on them was \$8.66. Pankey refused to pay this amount and tendered \$7.10, which the depot agent at Fort Lawn refused to receive, and has held the books for the charges ever since, a period of about two years.

This informal complaint of Pankey was made to the Commission on the 15th day of February, 1890, and in accordance with the practice of the Commission in such cases, a copy of it was sent to Sol. Haas, Traffic Manager of the Richmond & Danville Railroad Company, for examination and report to the Commission.

Mr. Haas very promptly forwarded to the Commission a voluminous mass of letters and telegrams that had passed between the general freight agent of the Richmond & Danville Railroad Company and the freight agents of the other lines over which the freight had been shipped from Troupe to Fort Lawn, with a view of ascertaining all the facts in relation to the charges made on this freight by each of said lines, and to ascertain, if possible, whether any overcharge had been made upon it, and if so by what line. The freight agents of the different lines have all made their statements in regard to it, and these are shown by this correspondence.

It shows no conflict of material facts in their statements in regard to it, but they were unable to agree on the subject as to whether there had been any overcharge, and if so, by what line this overcharge had been made, and so the matter stands.

The amount in controversy is very small, but there are features of it that make it a proper subject of determination on the part of the Commission. A formal hearing and examination of witnesses in regard to such a matter would, of course, involve an amount of expense far beyond that in controversy, while, at the same time, it would answer no just and valuable purpose. The letters and telegrams in regard to it, of the freight agents of the respective roads over which the freight was transported, are statements of intelligent men and we feel prompted, under the circumstances, to take their statements and that of the petitioner, and to consider them for the purpose of stating to the parties our conclusion in regard to it, especially as there seems to be no conflict between them as to the material facts, and besides we have the tariffs before us.

An examination of these papers made by the Commission shows that the shipment was forwarded *via* Shreveport, Vicksburg, Birmingham, Chattanooga, and Atlanta to Fort Lawn, and not by way of Little Rock, Memphis, and Chattanooga, as supposed by the complainant. The route by which the shipment was carried, and the actual rate and freight as charged, are as follows per 100 lbs.:

Shipment of Five Boxes of Books, 270 lbs.

Route.	Rate.	Freight.
Troupe to Shreveport—I. & G. N. and T. & P. R'ys....	58	\$1 57
Shreveport to Vicksburg—V. S. & P. R'y.....	60	1 62
Vicksburg to Chattanooga—C., N. O. & T. P. R'y.....	78.8	2 11
Chattanooga to Atlanta—E. T., V. & G. R'y.....	24.7	66
Atlanta to Fort Lawn—R. & D. R'y.....	\$1 00	\$2 70
	<hr/>	<hr/>
	\$3 21	\$8 66

These charges were in accordance with the published rates in force over these lines.

At the date of this shipment the first class rate from Memphis to Texas common points, and points taking common

point rates—which includes Troupe—was \$1.20 per 100 lbs., and it is understood that the west-bound rates applied also on east-bound shipments. This is confirmed by the letter of Mr. J. E. Galbraith, Traffic Manager of the International & Great Northern Railway, of date January 10th, and also his letter of February 1st, 1889, in which he states that the rate to Memphis was \$1.20 per hundred pounds. There is no tariff on file showing the rates in effect at that time between Vicksburg and Texas common points, but it is understood that the rates were the same as between Memphis and Texas common points, and Mr. Galbraith so states.

The rate from Troupe to Memphis and Vicksburg, therefore, appears to have been the same, namely, \$1.20 per one hundred pounds.

Tariff No. 21 of the Memphis & Charleston Railroad, which was in effect at the date of this shipment, shows first-class rate from Memphis to Fort Lawn to be \$1.34 per one hundred pounds. This, added to the rate of \$1.20 from Troupe to Memphis, would make a through rate of \$2.54 per one hundred pounds, and had the shipment been forwarded *via* that route it would have been charged that rate, and by this route the aggregate rate on the shipment from Troupe to Fort Lawn would have been \$6.86. It is proper to state here that the rate shown in the Memphis & Charleston Railroad Tariff No. 21 from Memphis to Fort Lawn and other local points in that territory are very much less than a combination of existing local rates, being made with reference to rates from the Ohio river points, to same territory.

There are no through rates from Vicksburg to Fort Lawn, and this appears to have been the cause of the trouble. The only through rates on file from Vicksburg to points in that territory are to principal points, such as Atlanta, Augusta, Macon, etc. The rates to these points from Vicksburg are the same as from Memphis. In the absence of a through rate to Fort Lawn, the agent at Vicksburg billed at the current rate to Atlanta, which was \$1.03 per one hundred pounds, and the agent of the Richmond & Danville Railroad Company at Atlanta, for the same reason, billed at the full local rate from Atlanta to Fort Lawn, viz., \$1.00 per one hun-

dred pounds, making the rate charged from Vicksburg to Fort Lawn \$2.03 per one hundred pounds, against the rate of \$1.34, Memphis to Fort Lawn.

The Richmond & Danville Railroad Company has a tariff on file which reads as follows: "Proportional Freight Rates, being Proportions from Atlanta, Georgia, on Business from Western Cities to Points named herein where Through Rates are made in conformity to the Interstate Commerce Law." This tariff shows first-class rate, Atlanta to Fort Lawn, 75 cents per hundred pounds, but from the wording of the tariff it seems that their proportional rates do not apply unless through rates are issued. Had through rates been issued from Vicksburg to the points named in this tariff, these proportional rates would have been used, and the Richmond & Danville proportion from Atlanta to Fort Lawn, on this shipment, would have been 75 cents per one hundred pounds pounds, instead of \$1.00 per one hundred pounds as charged.

The distance from Troupe, Texas, to Fort Lawn, South Carolina, *via* Memphis, is 1,172 miles, and *via* Vicksburg, over the route by which the freight was carried, 1,171 miles, being one mile less than *via* Memphis.

It is often usual for the same lines competing for the business between the same points to make the same rates. According to this usage the lines *via* Vicksburg would accept the same rate as was in effect *via* Memphis, and the lines east of Vicksburg, including the Richmond & Danville Railroad Company, would accept proportional rates meeting the rate *via* Memphis, and this would have been a through rate by each route. On this basis the rate and freight charges would be as follows, using same basis in dividing as prevailed *via* Memphis:

Shipment of Five Boxes of Books, 270 lbs.

	Rate.	Freight.
Troupe to Vicksburg—I. & G. N. R'y, T. & P. R'y, V., S. & P. R'y.....	\$1 20	\$3 24
Vicksburg to Chattanooga—C., N. O. & T. P. R'y.....	44.8	1 21
Chattanooga to Atlanta—E. T., V. & G. R'y	14.2	34
Atlanta to Fort Lawn—R. & D. R. R.	75	2 03
	<hr/>	<hr/>
	\$2 54	\$6 83

It was doubtless on this basis and theory that Mr. Galbraith made his statement to claimant and upon which the claimant relies. On this basis there would be an undercharge of five cents per one hundred pounds west of Vicksburg, only \$1.18 per one hundred pounds having been charged instead of \$1.20 per one hundred pounds, and overcharges on the other roads, as follows:

C., N. O. & T. P. R. R.....	90 cents.
E. T., V. & G. R. R.....	28 “
R. & D. R. R.....	67 “
	<hr/>
	\$1 85

and deducting the undercharge of five cents west of Vicksburg, would leave \$1.80 as the amount to be deducted from this freight bill in the proportions above stated.

But this theory and basis of computing the rates in this transaction can not be sustained as against the real facts involved. These facts are that there were no through rates established from Vicksburg to Fort Lawn, and this being true these carriers had the right under the law to charge their published rates upon this freight for transporting it from Vicksburg to Fort Lawn; and under such circumstances, if they were to charge the claimant less than these published rates, they would be guilty of a violation of the statute, in unjustly discriminating in his favor, and of giving him an unlawful preference over other shippers at these points. The Commission therefore finds that there is justly due to the defendant, The Richmond & Danville Railroad Company, for the transportation charges of this freight, the sum of \$8.66, and directs that upon the payment of this sum within thirty days from this date by the claimant that this property be turned over to him at Fort Lawn.

Another phase of this case remains to be noticed. If this freight had been shipped as directed by complainant from Troupe, Texas, *via* Shreveport, Vicksburg, Meridian, Birmingham, Atlanta and Augusta to Fort Lawn, the aggregate transportation charge upon it would have been, per 100 pounds:

Troupe to Vicksburg.....	\$1 20
Vicksburg to Augusta.....	1 03
Augusta to Fort Lawn.....	68
	<hr/>
	\$2 91

or \$7.80 for 270 pounds. The way-bill for this freight issued at Troupe, Texas, on the 10th of October, 1888, specifies, amongst other things, that it is consigned to J. B. Pankey, Fort Lawn, South Carolina, *via* Vicksburg, Mississippi. This is all there is in the way-bill to indicate the route over which it was to go. If the way-bill had specified that it was to be transported from Troupe, Texas, *via* Vicksburg, and Augusta, Georgia, to Fort Lawn, South Carolina, then the freight would have gone this route, and the charges upon it would have been \$7.80 instead of \$8.66. From the evidence before us it is apparent that the agent at Troupe, Texas, in making up the way-bill should have indicated that the freight was to go *via* Vicksburg, Mississippi, Atlanta, Georgia, Augusta, Georgia, to Fort Lawn, South Carolina. This was the route by which Pankey had directed the freight to be shipped and it should have been billed and shipped in that way; but as it was billed only *via* Vicksburg to Fort Lawn, South Carolina, without showing anything about Augusta, Georgia, it seems that at Vicksburg it was shipped through *via* Meridian, Birmingham, Chattanooga and Atlanta, and was consigned to the Richmond & Danville Railroad Company at Atlanta. At Atlanta the Richmond & Danville Railroad Company received the freight, paid all the charges on it up to that point, and carried it to Fort Lawn, South Carolina, at its local rates, which, as we have seen, under the circumstances, it had a right to do, because the Richmond & Danville Railroad Company was not responsible for the freight not having been billed according to Pankey's direction at Troupe, Texas. The complainant is mistaken in supposing that any additional charge in the transportation of this freight was imposed on him by reason of the fact that it was carried by way of Chattanooga instead of having been carried by way of Birmingham and the Georgia Pacific Railroad to Atlanta, which last would have been a shorter route, but

the freight rate was the same from Vicksburg to Atlanta whether the freight was carried by either of these routes.

The point of most consequence involved in this proceeding is the duty of the freight agent of the initial road at the point of origin of the freight to so way-bill it that it will go by the route directed by the shipper, where the shipper has given direction to him as to such route. In a case where the shipper gives no such direction, but leaves it to the freight agent to select the route for him and to ship it by that route, such freight agent is the agent of the shipper as well as of the company in selecting the route which will be best and least expensive to the shipper, and should in every instance, to the best of his knowledge and information, select such route as will be best and least expensive to the shipper, and make such notation on the way-bill as will properly carry the freight by that route. An observance of these plain and simple rules by freight agents would prevent numerous claims made for overcharges in shipments of freight, as well as confusion in such shipments.

Our conclusion, therefore, is, and we so find, that the International & Great Northern Railroad Company should refund to the complainant, upon request, the sum of 86 cents overcharge, which he has been compelled to pay on account of the manner in which this freight was way-billed at Troupe, Texas, from which should be deducted the five cents undercharge made between Troupe, Texas, and Vicksburg, leaving 81 cents to be refunded to complainant.

At the hearing and decision of this case the Chairman was absent because of illness, and did not in any way participate.

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SCOPE OF.—The provisions of the Act to regulate commerce construed in the light of the principles that apply to interstate commerce as enunciated by the courts of the United States, must be understood as intended to regulate all the commerce subject to the exclusive jurisdiction of Congress, including the agents and instrumentalities employed and the commodities carried, with only the limitation found in the Act itself.

Mattingly v. Pennsylvania Co., 592.

THROUGH ROUTES AND THROUGH RATES.—The Act does not provide for ordering through routes and through rates.

Little Rock and Memphis R. R. Co. v. East Tennessee, Virginia and Georgia R'y Co. et al., 1.

Mattingly v. Pennsylvania Co., 592.

WHEN CONTRACTS FOR USE OF RAILWAY TRACK ARE NOT AFFECTED BY.

Alford v. Chicago, Rock Island and Pacific R'y Co., 519.

See **PREFERENCE AND ADVANTAGE; UNJUST DISCRIMINATION. CONTRACTS. REASONABLE RATES.**

ADVANCES AND REDUCTIONS IN RATES.

See **RATES; TARIFFS.**

AGENTS.

DUTIES IN ROTTING FREIGHT.

Pankey v. Richmond and Danville R. R. Co., 658.

AGREEMENT.

FOR THROUGH RATES.

In re Application of F. W. Clark.

FOR TRACKAGE RIGHTS.

Alford v. Chicago, Rock Island and Pacific R'y Co., 450.

See **CONTRACTS.**

ANSWER.

REPLICATION NOT ALLOWED.

Oregon Short Line v. Northern Pacific R'y Co., 264.

AUTOMATIC FREIGHT CAR COUPLERS.

Report of Interstate Commerce Commission, 408.

BILLING OF FREIGHT.

DUTIES OF CARRIERS IN REGARD TO.

Pankey v. Richmond and Danville R. R. Co. et al., 658.

BOOKS, PAPERS AND DOCUMENTS.

COMPULSORY PRODUCTION OF.—There are several modes of procedure by which the inconvenience to the defendant carriers of producing books, and the delay and labor of going over their entries, might be avoided by petitioner. For example: If one or more witnesses should be subpoenaed from the different companies proceeded against, and a notice should be served with the subpoena requiring the witnesses to furnish the published rates and tariffs of such company, for a specified period, and also requiring them to furnish statements of the actual charges made and car facilities furnished during such period, to the Standard Oil Trust and the others named in the application, if different from the

published tariffs and schedules, it would probably be sufficient for all the purposes of these proceedings; or if the parties would take depositions by consent in advance of the hearing, it would answer the same purpose.

Rice v. Cincinnati, Washington and Baltimore R. R. Co. *et al.*, 186.

Rice v. Louisville and Nashville R. R. Co., 186.

See PRACTICE; EVIDENCE; CARRIERS.

BRIDGE CHARGES.

McMorran *et al.* v. Grand Trunk R'y Co. of Canada *et al.*, 252.

See REASONABLE RATES.

BULK OF FREIGHTS.

James & Abbott v. East Tennessee, Virginia and Georgia R'y Co. *et al.*, 225.

See CLASSIFICATION.

BURDEN OF PROOF.

IS ON CARRIER WHEN RATES ARE APPARENTLY DISPROPORTIONATE OR UNEQUAL.

McMorran *et al.* v. Grand Trunk R'y Co. of Canada *et al.*, 252.

IS ON CARRIER WHEN DIFFERENT RATES ARE CHARGED ON ARTICLES CLASSIFIED ALIKE.—*Ib.*

CANADIAN COMPETITION.

Report of Interstate Commerce Commission, 864.

See COMPETITION.

CAR-LOADS.

MINIMUM WEIGHTS.

Leonard v. Chicago and Alton R. R. Co., 241.

Chapelle v. Chicago and Alton R. R. Co., 241.

SOLID, TO MORE THAN ONE CONSIGNEE OR FROM MORE THAN ONE CONSIGNOR.

Thurber *et al.* v. New York Central and Hudson River R. R. Co. *et al.*, 473.

Leggett & Co. v. New York Central and Hudson River R. R. Co. *et al.*, 473.

Greene v. New York Central and Hudson River R. R. Co. *et al.*, 473.

CAR-LOADS AND LESS THAN CAR-LOADS.

Thurber *et al.* v. New York Central and Hudson River R. R. Co. *et al.*, 473.

Leggett & Co. v. New York Central and Hudson River R. R. Co. *et al.*, 473.

Greene v. New York Central and Hudson River R. R. Co. *et al.*, 473.

CAR MILEAGE.

INVESTIGATION CONCERNING.

Report of Interstate Commerce Commission, 805.

ON DIFFERENT CLASSES OF CARS.—*Ib.* 805.

WHEN BURDENSOME.—*Ib.* 809.

WHEN PAID TO SHIPPERS.—Only such allowance for the use of cars should be made to shippers as to permit no advantage to the private owner of cars who is also a shipper, nor afford a margin for paying rebates to other shippers.—*Ib.* 309.

ON CARS PRIVATELY OWNED.—Legislation regulating the payment of, recommended.—*Ib.* 433.

CARRIERS.

APPLICATIONS OF, FOR THROUGH ROUTES AND THROUGH RATES.

Little Rock and Memphis R. R. Co. *v.* East Tennessee, Virginia and Georgia R. R. Co. *et al.*, 1.

FOREIGN.—Engaged in the transportation of passengers or property for a continuous carriage or shipment from a place in the United States to a place in an adjacent foreign country are subject to the Act.

In re Acts and Doings of Grand Trunk R'y Co. of Canada, 89.

DUTY OF, IN PASSENGER TRANSPORTATION.—Carriers must furnish equal comforts, accommodations and protection to passengers without regard to race, color or sex.

Heard *v.* Georgia R. R. Co., 111.

DUTY OF, IN FILING AND PUBLICATION OF JOINT THROUGH EXPORT RATES.

New York Produce Exchange *v.* New York Central and Hudson River R. R. Co. *et al.*, 137.

DUTY OF TO EXHIBIT BOOKS AND RECORDS.—The books of the defendant carriers as to rates charged, facilities furnished, and general movements of freight, being in the nature of semi-public records, to any extent that they can fairly and justly save time, labor or expense to complainant, or to their companies, by giving to him in response to any calls he may make, statements of facts shown by their books, records, or files which may probably have importance on the hearing, the officers and agents of the defendant carriers under the direction of defendants, ought to give such statements, and ought to do so as promptly as may be found reasonably practicable.

Rice *v.* Cincinnati, Washington and Baltimore Railroad Co. *et al.*, 186.

Rice *v.* Louisville and Nashville Railroad Co., 186.

Much unnecessary controversy, inconvenience and delay might well be avoided in the first instance, as well as in subsequent stages of proceedings, if carriers would exhibit, without technical objection, what their books show in reference to a transaction in question to any one who calls for the information in good faith, believing, though perhaps erroneously, that it is, or may be, important to his interests, and when the application is seasonably and properly made, with a due regard for the convenience of the carriers' agents and officers; and the instances are numerous in which it would put an end to the controversy, and in many others that the party would not then trouble the carrier for the production of the books.—*Ib.*

METHODS OF, IN SHIPMENTS OF FREIGHT.

Report of Interstate Commerce Commission, 821.

RECORDS OF.—*Ib.*

BURDEN IS ON CARRIERS TO JUSTIFY APPARENTLY DISPROPORTIONATE OR RELATIVELY UNEQUAL RATES.

McMoran *et al.* *v.* Grand Trunk Railway of Canada *et al.*, 252.

BURDEN IS ON CARRIER TO JUSTIFY DIFFERENT RATES ON ARTICLES CLASSIFIED ALIKE.—*Ib.*

COMPLAINTS AGAINST, WHEN INSUFFICIENT.

White *v.* Michigan Central R. R. Co. *et al.*, 281.

COMPETITION BY CANADIAN.

Report of Interstate Commerce Commission, 364.

LAKE AND RAIL.

Report of Interstate Commerce Commission, 381.

BY WATER.—Extension of the law to make it apply to common carriers by water recommended.—*Ib.*, 433.

WHEN NOT ENTITLED TO HAVE THROUGH SHIPMENTS PROTECTED AS AGAINST COMPETITORS.

Chicago, Rock Island and Pacific Railway Co. *v.* Chicago and Alton R. R. Co., 450.

DUTY OF IN CLASSIFYING PROPERTY.—Carriers are not at liberty to classify property as a basis of transportation rates and impose charges for its carriage with exclusive regard to their own interests, but they must respect the interests of those who may have occasion to employ their services, and conform their charges to the rules of relative equality and justice which the Act prescribes.

Thurber *et al.* *v.* New York Central and Hudson River R. R. Co. *et al.*, 473.

RESPONSIBILITY OF IN PASSENGER TRANSPORTATION.—The extraordinary liability imposed by law upon a railroad company as a common carrier for the sufficiency and safety of its passenger cars and the competency of its employees in operating such cars is a highly important protection to the public, but such company might very reasonably claim that it was not responsible for a passenger car of a private car company, or the consequences of that passenger car being transported as part of its train in causing a wreck, collision or delay, when it had no volition in accepting or rejecting such car, but was forced to transport it by order of a civil tribunal.

Worcester Excursion Car Co. *v.* Pennsylvania R. R. Co., 577.

The interest of the public in a matter of this kind is vitally important, and lies in the direction of holding every common carrier by rail to the strictest responsibility in furnishing safe, suitable and sufficient car equipment for the transportation of persons over its line; and the law-making power, in enacting the Act to regulate commerce, has not undertaken to divide this responsibility with the carrier in the selection of its cars.—*Ib.*

SELECTION OF CARS BY.—It would be directly at war with the rights and safety of the traveling public, as well as of the railroad company, if the line of the carrier should become an arena over which it should be compelled to make a contract of some sort with every car company or inventor of cars, and transport the public in trains of which such cars were part.—*Ib.*

STATE.—When a State carrier engages in interstate commerce it becomes a national instrumentality for the purposes of such commerce, and is subject to regulations prescribed by the national authority. It can not limit its obligations in that business, but must serve the business offered impartially and without preference or discrimination.

Mattingly *v.* Pennsylvania Company, 592.

WHEN FREE CARTAGE OF FREIGHTS IS UNLAWFUL.

Stone & Carten *v.* Detroit, Grand Haven and Milwaukee R'y Co., 618.

DUTIES OF IN ROUTING FREIGHT.

Pankey *v.* Richmond and Danville R. R. Co. *et al.*, 658.

See BOOKS, PAPERS AND DOCUMENTS; COMPETITION; EVIDENCE; LAKE AND RAIL TRANSPORTATION; LONG AND SHORT-HAUL CLAUSE; PRACTICE; PREFERENCE AND ADVANTAGE; REASONABLE RATES; RELATIVE RATES; SUBPENA DUOES TECUM; UNJUST DISCRIMINATION; WATER AND RAIL LINES; WATER COMPETITION; WATER TRANSPORTATION.

CARS.

SEPARATE FOR WHITE AND COLORED PASSENGERS.

Heard v. Georgia R. R. Co., 111.

RETURN LOADS FOR EMPTY.

Jones & Abbott v. East Tennessee, Virginia and Georgia Railway Co. *et al.*, 325.

LIVE STOCK.

Leonard v. Chicago and Alton R. R. Co., 241.

Chapelle v. Chicago and Alton R. R. Co., 241.

OWNED BY SHIPPERS OR OTHER PARTIES.—A railroad company voluntarily using a car in its business, no matter how obtained, in legal contemplation makes the car its own for all purposes of rates and of safe carriage. It can not escape its duty to charge only reasonable rates, or its liability for the safe carriage of persons or property, on the ground that its cars may not be its own property, or that a high rate may be paid for their use.

Report of Interstate Commerce Commission, 399.

SHOULD BE OWNED BY CARRIERS.—*Ib.*

HEATING OF PASSENGER.

Report of Interstate Commerce Commission, 412.

FLAT AND BOX CARS IN COTTON TRANSPORTATION.

New Orleans Cotton Exchange v. Illinois Central R. R. Co. *et al.*, 534.

New Orleans Cotton Exchange v. Cincinnati, New Orleans and Texas Pacific Ry Co. *et al.*, 534.

SELECTION OF.—A railroad company may acquire cars by construction, by purchase, or by contract for their use, and no one has the power to compel a railroad company to select among these several modes or to contract with all comers.

Worcester Excursion Car Co. v. Pennsylvania R. R. Co., 577.

SEE CAR MILEAGE: PREFERENCE AND ADVANTAGE; REASONABLE RATES; RELATIVE RATES; RETURN LOADS.

CARTAGE.

FREE.

Report of Interstate Commerce Commission, 309.

Storer v. Detroit, Grand Haven and Milwaukee R'y Co., 613.

SEE FREE CARTAGE OF FREIGHTS: LONG AND SHORT-HAUL CLAUSE; REBATES; UNJUST DISCRIMINATION.

CATTLE.

Leonard v. Chicago and Alton R. R. Co., 241.

Chapelle v. Chicago and Alton R. R. Co., 241.

SEE LIVE STOCK.

CIRCUMSTANCES AND CONDITIONS.

WHAT DOES NOT CONSTITUTE DISCRIMINATION.

In the Matter of the Tariffs and Classifications of the Atlanta and West Point R. R. Co. *et al.*, 19.

Jones & Abbott v. East Tennessee, Virginia and Georgia R'y Co. *et al.*, 325.

WHAT ARE DISCRIMINATIONS.

Timberland v. N. Y. Central and Hudson River R. R. Co. *et al.*, 473.

Leggatt & Co. v. N. Y. Central and Hudson River R. R. Co. *et al.*, 473.

Greene v. N. Y. Central and Hudson River R. R. Co. *et al.*, 473.
 New Orleans Cotton Exchange v. Illinois Central R. R. Co., 534.
 New Orleans Cotton Exchange v. Cincinnati, New Orleans and Texas
 Pacific R'y Co. *et al.*, 534.

See LONG AND SHORT-HAUL CLAUSE; REASONABLE RATES; RELATIVE RATES;
 UNJUST DISCRIMINATION.

CLASSIFICATION.

UNIFORM.—What has been done toward establishing a uniform classification.
 Report of Interstate Commerce Commission, 345, 351.

UNIFORM.—A confusion created or maintained by the carrier for its own purposes, can not be used to justify a disobedience of the law, and if changes in classification methods are necessary in order to conform to the requirements of the statute, such changes should be made without hesitation. The re-arrangement of rates and the simplification of classification are matters which the carriers should undertake and carry forward for themselves.

In the Matter of the Tariffs and Classifications of the Atlanta and West Point R. R. Co. *et al.*, 19, 68, 86.

WHEN UNLAWFUL.—When classifications in use are complicated and involved containing many exceptions and variations; when different classifications are used upon the road of the same carrier for shipment of the same commodity to neighboring points; when two or more classifications are employed upon the same shipment in fixing a so-called combination rate upon the line of the same carrier or of two or more connecting carriers, they are not in conformity with the statute.—*Ib.*

BULK AND VALUE OF FREIGHT.—A difference in the bulk and value of lumber does not justify a greater charge for the shorter distance when the carriers in their published rate sheets put the lumber in the same class and at the same rate.

James & Abbott v. East Tennessee, Virginia and Georgia R. R. Co. *et al.*, 225.

ARTICLES CLASSIFIED ALIKE ARE PRESUMPTIVELY ENTITLED TO EQUAL RATES.

—Grain and grain products classified alike are presumptively entitled to equal rates, and if a difference is made by a carrier it assumes the burden by sustaining it by satisfactory evidence.

McMorran *et al.* v. Grand Trunk R'y Co. of Canada *et al.*, 252.

OF CORN AND CORN PRODUCTS.—A change in the classification whereby the discrimination was made between the rate on corn and its direct products which subjected persons in a locality engaged in the business of manufacturing corn into its direct products, or of selling the same, to unreasonable prejudice or disadvantage, and was without necessity or advantage to the carrier, or any reason founded on the character or condition of the traffic, was held to be unlawful, notwithstanding the new rate on corn was open to all persons equally and with equal service.

Bates v. Pennsylvania R. R. Co. *et al.*, 432.

CHANGES IN, WHEN UNJUSTIFIABLE.—Where an existing classification and rate are not shown to operate injuriously to the carriers from a given point or to give undue advantage to shippers, a change is not justifiable that materially injures an important industry and a class of shippers at that point who have there built up the industry in reliance upon a continuation of the previous classification and rate first established and long maintained by the carriers themselves, without complaint from any quarter.—*Ib.*

VALUE OF.—Classification of freight for transportation purposes is in terms recognized by the Act to regulate commerce and is therefore lawful. It is also a valuable convenience both to shippers and carriers.

Thurber *et al.* v. New York Central and Hudson River R. R. Co. *et al.*, 473.

Leggett v. Same, 473.

Greene v. Same, 473.

CAR-LOAD AND LESS THAN CAR-LOAD QUANTITIES.—A classification of freight designating different classes for car-load quantities and for less than car-load quantities for transportation at a lower rate in car-loads than in less than car-loads is not in contravention of the Act to regulate commerce. The circumstances and conditions of the transportation in respect to the work done by the carrier and the revenue earned are dissimilar, and may justify a reasonable difference in rate. The public interests are subserved by car-load classifications of property that, on account of the volume transported to reach markets or supply the demands of trade throughout the country, legitimately or usually moves in such quantities.—*Ib.*

Under the Official Classification, the articles known in trade as grocery articles are so classified as to discriminate unjustly in rates between car-loads and less than car-loads upon many articles, and a revision of the classification and rates to correct unjust differences and give these respective modes of shipment more relatively reasonable rates is necessary, and is so ordered.—*Ib.*

See **LONG AND SHORT HAUL CLAUSE; PREFERENCE AND ADVANTAGE; REASONABLE RATES; RELATIVE RATES; UNJUST DISCRIMINATION.**

COLORED PASSENGERS.

Heard v. Georgia R. R. Co., 111.

See **PASSENGERS.**

COAL.

In re Acts and Doings of Grand Trunk R'y Co. of Canada, 89.

Report of Interstate Commerce Commission, 312.

COMBINATION RATES.

See **RATES.**

COMMERCE.

FOREIGN REGULATION OF.—English legislation and the procedure thereunder in respect to applications by carriers to be admitted to through routes and to participate in through rates stated.

Little Rock and Memphis R. R. Co. v. East Tennessee, Virginia and Georgia R'y Co. *et al.*, 1.

STATE AND FEDERAL REGULATION OF.

Leonard v. Chicago and Alton R. R. Co., 241.

Chapelle v. Chicago and Alton R. R. Co., 241.

See **INTERSTATE COMMERCE.**

COMMISSIONS.

STATE RAILROAD.

See **STATE RAILROAD COMMISSIONS.**

COMMISSIONS ON THE SALE OF TICKETS.

Report of Interstate Commerce Commission, 303.

PROHIBITION OF, RECOMMENDED.—*Ib.* 433.

COMMUTATION TICKETS.

Pittsburgh, Cincinnati and St. Louis R'y Co. *v.* Baltimore and Ohio R. R. Co., 465.

Sidman *v.* Richmond and Danville R. R. Co., 512.

See TICKETS.

COMPETITION.

COMBINED RAIL AND WATER.

James & Abbott *v.* East Tennessee, Virginia and Georgia R'y Co., 225.

BY CANADIAN CARRIERS.—Physical conditions stated; regulations under which it is carried on, described.

Report of Interstate Commerce Commission, 364.

WATER.—Demoralizing influences of, on rail rates, described.—*Ib.* 381.

Bates *v.* Pennsylvania R. R. Co. *et al.*, 435.

See LONG AND SHORT HAUL CLAUSE; UNJUST DISCRIMINATION.

COMPLAINANT.

NEED NOT BE DIRECTLY DAMAGED.

In re Acts and Doings of Grand Trunk R'y Co. of Canada, 89.

See REPARATION.

COMPLAINT.

WHEN INSUFFICIENT.

White *v.* Michigan Central R. R. Co. *et al.*, 281.

AGAINST THE WORKING OF THE LAW.

Report of Interstate Commerce Commission, 398.

See INVESTIGATIONS; PRACTICE; PARTIES.

CONCESSION OF RELIEF.

TERMINATES THE CONTROVERSY.

Bishop *v.* H. R. Duval, receiver, etc., 128.

Harris *v.* H. R. Duval, receiver, etc., 128.

Lincoln Board of Trade *v.* Union Pacific R'y Co. *et al.*, 221.

Chicago, St. Louis and Pittsburgh R. R. Co. *v.* Cleveland, Cincinnati, Chicago and St. Louis R'y Co., 223.

American Wire Nail Co. *v.* Cincinnati, New Orleans and Texas Pacific R'y Co. *et al.*, 224.

Rawson *v.* Newport News and Mississippi Valley Co., 266.

CONFERENCE OF RAILROAD COMMISSIONERS.

Report of Interstate Commerce Commission, 337.

CONSOLIDATION OF LINES.

Report of Interstate Commerce Commission, 389.

CONTINUOUS BRAKES FOR FREIGHT TRAINS.

Report of Interstate Commerce Commission, 409.

CONTINUOUS CARRIAGE OF FREIGHTS.

Chicago, Rock Island and Pacific R'y Co. v. Chicago and Alton R. R. Co., 450.

Mattingly v. Pennsylvania Co., 592.

CAN NOT BE AVOIDED BY EVASION OF THE LAW.—The carriage of freights can not be prevented from being treated as one continuous carriage from the place of shipment to the place of destination by any means or devices intended to evade any of the provisions of the Act.

In re Acts and Doings of Grand Trunk R'y Co. of Canada, 89.

CONTRACTS.

TRACKAGE RIGHTS.—In the absence of statutory provision the rights of a railroad company under a lawful agreement for a specified use of the tracks of another railroad company are measured in respect to the track use by the terms of the contract, and the provisions of the Act to regulate commerce applied to the situation created by the contract and had no authority for a different use of the tracks.

Alford v. Chicago, Rock Island and Pacific R'y Co., 519.

CARS.—A railroad company may acquire cars by construction, by purchase, or by contract for their use, and no one has the power to compel a railroad company to select among these several modes or to contract with all comers.

Worcester Excursion Car Co. v. Pennsylvania R. R. Co., 577.

See **AGREEMENTS; FACILITIES OF TRAFFIC; PREFERENCE AND ADVANTAGE; THROUGH ROUTES AND THROUGH RATES; UNJUST DISCRIMINATION.**

CORN AND CORN PRODUCTS.

Bates v. Pennsylvania R. R. Co. *et al.*, 435.

See **UNJUST DISCRIMINATION.**

COST OF CARRIAGE.

McMorran *et al.* v. Grand Trunk R'y Co. of Canada *et al.*, 252.

Thurber *et al.* v. New York Central and Hudson River R. R. Co. *et al.*, 473.

Leggett v. Same, 473.

Greene v. Same, 473.

COTTON.

New Orleans Cotton Exchange v. Illinois Central R. R. Co. *et al.*, 534.

New Orleans Cotton Exchange v. Cincinnati, New Orleans and Texas Pacific R'y Co. *et al.*, 534.

COUPLERS.

AUTOMATIC FREIGHT CAR.

Report of Interstate Commerce Commission, 404.

DAMAGES.

See **OVERCHARGE; REPARATION.**

DEPOSITIONS.

AMENDMENT OF ACT CONCERNING, RECOMMENDED.

Report of Interstate Commerce Commission, 432.

DISCRETION.

TO RE-OPEN CASE AFTER DECISION.

In re Rice, Robinson & Witherop v. Western New York and Pennsylvania R. R. Co., 87.

See PRACTICE.

DISTANCE.

See REASONABLE RATES.

DOCUMENTARY EVIDENCE.

Rice v. Cincinnati, Washington and Baltimore R'y Co. et al., 186.

Rice v. Louisville and Nashville R. R. Co., 186.

ELEVATOR CHARGES.

COMPLAINT OF.—A complaint against carriers subject to the Act of deductions made from the weight of wheat delivered at elevators failed to charge that the wheat was delivered for interstate transportation, or indeed for transportation anywhere. *Held*, that the complaint was insufficient in substance to show a violation of the Act and must be dismissed, but without prejudice.

White v. Michigan Central R. R. Co. et al., 281.

EMIGRANTS.

SPECIAL TARIFF ON MOVABLES OF.

Elvey v. Illinois Central R. R. Co., 652.

EMPLOYEES.

See RAILWAY EMPLOYEES.

EMPTY CARS.

See CARS; RETURN LOADS.

EVIDENCE.

ADDITIONAL.—After decision a petition to open the case for further testimony and re-hearing should indicate the nature of the new testimony and its purpose.

In re Rice, Robinson & Witherop v. Western New York and Pennsylvania R. R. Co., 87.

WHAT IS SUFFICIENT.—In proceedings like these it is enough to show the rates actually charged. If there are or have been any such to certain shippers or consignees different from the published tariff rates, or the preferential facilities, if any such, furnished by the defendants to some shippers or consignees and not to others, or the comparative rates on the different commodities named in the complaints, and from and to designated points. Innumerable shipments, with all their minuteness of detail over the various lines that were made for many years before the Act to regulate commerce took effect, as well as since that date, and the names of the consignors and consignees at so many different

points, through these long periods of time, seems to be immaterial. It appears to be sufficient for all the purposes of these cases to show the rates published, the rates actually charged, and the facilities furnished from and to designated points since the Act to regulate commerce went into effect, and for whatever light these may throw upon the question of the reasonableness and justness of the rates, if any, and the fairness of the facilities afforded by way of comparison, what these were for a reasonable time; for example, for a period of twelve months before the Act to regulate commerce went into effect.

Rice v. Cincinnati, Washington and Baltimore R. R. Co. et al., 136.

Rice v. Louisville and Nashville R. R. Co., 186.

IN PENAL AND CRIMINAL PROSECUTIONS.—Difficulties in the way of obtaining evidence of violations of the statute discussed.

Report of Interstate Commerce Commission, 431.

The settled principle that protects a man from giving compulsory evidence criminating himself is a shield under which offenses may frequently hide. The provision in the Act that the claim that testimony may tend to criminate the witness shall not excuse him from testifying, but that his evidence shall not be used against him on the trial of any criminal proceeding does not entirely meet this difficulty.—*Id.*

BY DEPOSITION.—Amendment of the Act in regard to the attendance of witnesses and the taking of testimony by deposition, recommended.—*Id.* 432.

See **BOOKS, PAPERS AND DOCUMENTS; CARRIERS; PRACTICE; SUBPOENAS DUCES TECUM.**

EXPORT RATES.

New York Produce Exchange v. New York Central and Hudson River R. R. Co. et al., 137.

Report of Interstate Commerce Commission, 872.

See **RATES; TARIFFS; TRAFFIC; UNJUST DISCRIMINATION.**

EXPORT TRAFFIC.

New York Produce Exchange v. New York Central and Hudson River R. R. Co. et al., 137.

Report of Interstate Commerce Commission, 872.

See **TARIFFS; TRAFFIC; UNJUST DISCRIMINATION.**

FACILITIES OF TRAFFIC.

THROUGH ROUTES AND THROUGH RATES.—English legislation and the procedure thereunder, in respect to applications by carriers to be admitted to through routes and to participate in through rates stated and principles then applied explained.

Little Rock and Memphis R. R. Co. v. East Tennessee, Virginia and Georgia R. R. Co. et al., 1.

The Act to regulate commerce was probably intended to effect similar results, but in its present form and in the absence of the necessary machinery, it is not adequate to afford the relief prayed in the petition.—*Id.*

Recommendations of Second Annual Report for amendment of section 3 renewed.—*Id.*

Kentucky and Indiana Bridge Co. v. Louisville and Nashville R. R. Co. (2 I. C. C. Rep. 162) referred to and explained.—*Id.*

The national regulations prescribed are not in all respects co-extensive with the power of Congress, and do not provide for ordering through routes and through rates. While it is the duty of a State carrier which engages in interstate commerce to forward traffic offered from a connecting line, there is no authority under the present Act to compel the carrier to forward the traffic over a route not operated or selected by itself.

Mattingly v. Pennsylvania Co., 592.

INTERCHANGE OF TRAFFIC.

Report of Interstate Commerce Commission, 395.

CONTRACT FOR USE OF TRACKS.—In the absence of statutory provision the rights of a railroad company under a lawful agreement for a specified use of the tracks of another railroad company are measured in respect to the track use by the terms of the contract, and the provisions of the Act to regulate commerce apply to the situation created by the contract and add no authority for a different use of the tracks.

Alford v. Chicago, Rock Island and Pacific R'y Co., 519.

TO AND FROM LOCAL STATIONS.—The duty of a railroad company operating its own road or a road that it controls to serve the local stations on its line does not apply to a company that has only a running privilege for through trains to reach points on its own line over a part of the road of another company which it does not control. In such a case the company is not required to disregard the conditions of its agreement, and does not violate the provisions of the Act to regulate commerce by not receiving and discharging traffic on the tracks of the proprietary company, the sufficiency of the local service rendered by the latter not being questioned.—*Id.*

FEDERAL GOVERNMENT.

Leonard v. Chicago and Alton R. R. Co., 241.

Chapelle v. Chicago and Alton R. R. Co., 241.

Report of Interstate Commerce Commission, 400.

FEDERAL REGULATION OF SAFETY APPLIANCES.

Report of Interstate Commerce Commission, 400, 417.

FERRY EXPENSES.

McMorran et al. v. Grand Trunk R'y Co. of Canada et al., 252.

See **REASONABLE RATES.**

FIRST SECTION. 2—**AMENDMENT OF, RECOMMENDED.**

Report of Interstate Commerce Commission, 432.

See **CARRIERS; FACILITIES OF TRAFFIC; REASONABLE RATES; RELATIVE RATES; ACT TO REGULATE COMMERCE; TARIFFS.**

FLOUR.

New York Produce Exchange v. New York Central and Hudson River R. R. Co. et al., 137.

FOURTH SECTION.

See **LONG AND SHORT HAUL CLAUSE.**

FRAUD.**IN THE SALE OF PASSENGER TICKETS.**

Report of Interstate Commerce Commission, 305.

FREE CARTAGE OF FREIGHT.**INVESTIGATION CONCERNING.**

Report of Interstate Commerce Commission, 309.

WHEN UNLAWFUL.

Stone & Carten v. Detroit, Grand Haven and Milwaukee R'y Co., 618.

See LONG AND SHORT HAUL CLAUSE; UNJUST DISCRIMINATION.

FREE PASSES AND FREE TRANSPORTATION.**INVESTIGATION CONCERNING.**

Report of Interstate Commerce Commission, 297.

ABUSES OF.—The law aims at the correction of the abuses of free transportation, and in accomplishing this general purpose some forms of free or reduced transportation that at first view might appear plausible or even unobjectionable in themselves have to fall under its general restrictions.—*Ib.* 300.

TO FAMILIES OF SUBORDINATE RAILWAY EMPLOYEES.—*Ib.* 301.

GROSS ABUSES ATTENDING.—*Ib.* 387.

WHEN LIMITED TO STATE LINES.—*Ib.* 387.

FRUITS.

Bishop v. Duval, receiver, etc., 128.

Harris v. Duval, receiver, etc., 128.

GOVERNMENT-AIDED RAILROAD AND TELEGRAPH LINES.

Report of Interstate Commerce Commission, 330.

GRAIN.

New York Produce Exchange v. New York Central and Hudson River R. R. Co. *et al.*, 137.

McMorran *et al.* v. Grand Trunk Railway of Canada *et al.*, 252.

GRAIN PRODUCTS.

McMorran *et al.* v. Grand Trunk R'y Co. of Canada *et al.*, 252.

GROUP RATES.

Stone & Carten v. Detroit, Grand Haven and Milwaukee R'y Co., 618.

ON COAL. Principles relating to as stated in Rend v. Chicago and Northwestern R'y Co., 2 I. C. C. Rep. 540, and Imperial Coal Co. v. Pittsburgh and Lake Erie R. R. Co., *Ib.* 618, referred to.

Report of Interstate Commerce Commission, 312.

HEARINGS.**WHERE HELD.**

Report of Interstate Commerce Commission, 292.

INSURANCE FUNDS.**FOR RAILWAY EMPLOYEES.**

Report of Interstate Commerce Commission, 424.

INTERCHANGE OF TRAFFIC.

Report of Interstate Commerce Commission, 395.

See FACILITIES OF TRAFFIC; TRAFFIC.

INTERSTATE COMMERCE.

TRANSPORTATION TO ADJACENT FOREIGN COUNTRY.—The provisions of the Act to regulate commerce apply to foreign as well as domestic common carriers engaged in the transportation of passengers or property, for a continuous carriage or shipment, from a place in the United States to a place in an adjacent foreign country.

In re Acts and Doings of Grand Trunk R'y Co. of Canada, 89.

REGULATION OF.—The fact that by the action of certain State commissions a car is permitted to be loaded by the shipper at discretion without the carlot rate being affected thereby is not a reason for adopting the like rule in interstate traffic if that course is found not to be most just and politic.

Leonard *v.* Chicago and Alton R. R. Co., 241.

Chapelle *v.* Chicago and Alton R. R. Co., 241.

The grant to the Federal Government of the power to regulate interstate commerce is full and complete, and cannot be narrowed or encroached upon by State authority, either directly or indirectly. The fact, therefore, that one or more States have adopted a particular regulation is not a reason for applying it to interstate commerce if in itself it appears to be objectionable. State action will always be treated with the highest deference and respect, but can not be allowed to control in matters within the federal jurisdiction.—*Ib.*

There is no such thing as a complete and harmonious regulation of interstate commerce by rail when a part of the carriers by rail are governed by one set of laws and other parts are left to the regulation of laws which are materially different.

Report of Interstate Commerce Commission, 386.

STATE REGULATION OF, HOW EFFECTED.—*Ib.*

ELEVATOR REGULATIONS.—Complaint was made against carriers subject to the Act of deductions made from the weight of wheat delivered to their elevators, but failed to charge that the wheat was delivered for interstate transportation. *Held*, that the complaint was insufficient and must be dismissed, but without prejudice.

White *v.* Michigan Central R. R. Co. *et al.*, 281.

DECISIONS OF UNITED STATES COURTS RELATING TO.

Report of the Interstate Commerce Commission, 316.

WHAT IS.—The provisions of the Act to regulate commerce, construed in the light of the principles that apply to interstate commerce as enunciated by the courts of the United States, must be understood as intended to regulate all the commerce subject to the exclusive jurisdiction of Congress, including the agents and instrumentalities employed and the commodities carried, with only the limitations found in the Act itself.

Mattingly *v.* Pennsylvania Company, 592.

The proviso in the first section that the provisions of the Act shall not apply to the transportation of passengers or property, as to the receiving, delivery, storage or handling of property, wholly within one State, and not shipped to or from a foreign country from or to any State or Territory as aforesaid, that is, by continuous carriage or shipment, only excludes from regulation the purely internal commerce of a State, that which is confined within its limits, which originates and ends in the same State.—*Ib.*

INTERSTATE COMMERCE COMMISSION.

POWER UNDER THE THIRD SECTION LIMITED.—The Act to regulate commerce does not compel the making of through routes and through rates.

Little Rock and Memphis R. R. Co. *v.* East Tennessee, Virginia and Georgia R'y Co. *et al.*, 1.

Mattingly *v.* Pennsylvania Company, 592.

INVESTIGATION BY.—The Commission on its own motion investigated the course pursued by certain carriers in respect to compliance with the provisions of the statute.

In the Matter of the Tariffs and Classifications of the Atlanta and West Point R. R. Co. *et al.*, 19.

Has authority to institute investigations and deal with violations of the law independently of a formal complaint or of direct damage to a complainant.

In re Acts and Doings of Grand Trunk R'y Co. of Canada, 89.

DUTY OF, TO INVESTIGATE ON ITS OWN MOTION.—This case was heard solely upon the respondents' motions to dismiss the complaint for insufficiency of its allegations to show violations of the Act to regulate commerce, but the complainant having filed some depositions taken before the hearing of said motions, the Commission looked into this evidence with a view of seeing what light it shed upon the general claim of unlawful practice by the respondents, and upon the duty of the Commission to proceed against them on its own motion.

White *v.* Michigan Central R. R. Co. *et al.*, 281.

WHEN CASE WILL BE RE-OPENED.

In re Rice, Robinson & Witherop *v.* Western New York and Pennsylvania R. R. Co., 87.

WHEN APPLICATION FOR RE-HEARING WILL BE DENIED.

Myers *v.* Pennsylvania Company *et al.*, 180.

PRODUCTION OF BOOKS, PAPERS AND DOCUMENTS.—In laying down rules upon the subject of what an application shall contain for the compulsory production of books, papers, tariffs, contracts, agreements and documents relating to any matter under investigation, the Commission is governed by the provisions of the Act to regulate commerce and the objects and purposes of this statute, but in connection with these will also consider the practice in the courts of the United States, as well as the rules prescribed by federal statutes in proceedings which seem to be most nearly analogous to proceedings in which such application to the Commission is made.

Rice *v.* Cincinnati, Washington and Baltimore R. R. Co. *et al.*, 186.

Rice *v.* Louisville and Nashville R. R. Co., 186.

ABANDONMENT OF TARIFF.—The Commission will not order carriers to cease and desist from enforcing a long abandoned tariff because such an order would be vain and useless.

Rawson *v.* Newport News and Mississippi Valley Co. *et al.*, 266.

ABSTRACT QUESTIONS WILL NOT BE ANSWERED.

Bishop *v.* Duval, receiver, etc., 128.

Harris *v.* Duval, receiver, etc., 128.

Lincoln Board of Trade *v.* Union Pacific R'y Co. *et al.*, 231.

Chicago, St. Louis and Pittsburgh R. R. Co. *v.* Cleveland, Cincinnati, Chicago and St. Louis R'y Co., 223.

American Wire Nail Co. *v.* Cincinnati, New Orleans and Texas Pacific R'y Co. *et al.*, 224.

Rawson *v.* Newport News and Mississippi Valley Co., 266.

THIRD ANNUAL REPORT OF.

Report of Interstate Commerce Commission, 289.

ORGANIZATION OF FORCE.—*Ib.* 289.

DISTRIBUTION OF WORK.—*Ib.* 289.

INVESTIGATIONS BY.—*Ib.* 292.

PROCEEDINGS BY.—*Ib.* 292.

CONFERENCES HELD.—*Ib.* 296.

PRINTING AND DISTRIBUTION OF REPORTS, DECISIONS AND OTHER DOCUMENTS.
—*Ib.* 321.

CIRCULARS.—*Ib.* 323.

STATISTICAL WORK OF.—*Ib.* 324.

HOW THE ACT HAS BEEN ADMINISTERED BY.—*Ib.* 428.

AMENDMENT TO THE STATUTE RECOMMENDED BY.—*Ib.* 432.

See **ABSTRACT QUESTIONS; BOOKS, PAPERS AND DOCUMENTS; CONCESSION OF RELIEF; CARS; CARRIERS; EVIDENCE; RE-HEARING; LONG AND SHORT-HAUL CLAUSE; PRACTICE; PREFERENCE AND ADVANTAGE; REASONABLE RATES; RELATIVE RATES; UNJUST DISCRIMINATION.**

INVESTIGATIONS.

BY THE COMMISSION.—The Commission has authority to institute investigations and to deal with violations of the law independently of a formal complaint or of direct damage to a complainant.

In re Acts and Doings of Grand Trunk R'y Co. of Canada, 89.

White v. Michigan Central R. R. Co. et al., 281.

WHERE HELD.

Report of Interstate Commerce Commission, 292.

See **INTERSTATE COMMERCE COMMISSION.**

JOINT RATES.

See **RATES.**

JOINT TARIFFS.

See **TARIFFS.**

JURISDICTION.

WHEN INADEQUATE.

Little Rock and Memphis R. R. Co. v. East Tennessee, Virginia and Georgia R. R. Co. et al., 1.

Mattingly v. Pennsylvania Company, 592.

FOREIGN CARRIERS.—The Commission has jurisdiction of foreign carriers engaged in the transportation of passengers and property for a continuous carriage or shipment from a place in the United States to a place in adjacent foreign country.

In re Acts and Doings of Grand Trunk R'y Co. of Canada, 89.

IN PENAL CASES.—The jurisdiction of the Commission does not cover suits for penalties or criminal indictments.

Report of the Interstate Commerce Commission, 431.

LAKE AND RAIL TRANSPORTATION.

RELATIONS OF.

Report of Interstate Commerce Commission, 381.

LEGISLATION.

RAILWAY.

Report of Interstate Commerce Commission, 345.

LIVE STOCK.

WEIGHING OF.—The fact that some difficulties are found to exist in the prompt and accurate weighing of cattle is not a reason for abolishing the new practice of prescribing a minimum rate for car-loads and charging

proportionately by the 100 pounds for any excess over the minimum, but rather for improving and perfecting it.

Leonard v. Chicago and Alton R. R. Co., 241.

Chappelle v. Chicago and Alton R. R. Co., 241

See CARS; REASONABLE RATES.

LOCAL RATES.

See RATES.

LOCAL STATIONS.

WHEN GRANT OF TRACKAGE RIGHTS FOR THROUGH BUSINESS EXCLUSIVELY DOES NOT DISCRIMINATE AGAINST.

Alford v. Chicago, Rock Island and Pacific R'y Co., 519.

See PREFERENCE AND ADVANTAGE; UNJUST DISCRIMINATION.

LONG AND SHORT HAUL CLAUSE.

APPLICATION OF.—In an investigation made by the Commission, on its own motion, it was found that the greater charge for the transportation for a like kind of property for a shorter than for a longer distance over the same line in the same direction was unjustifiably made at many points. Results as ascertained stated, principles of the short haul clause as announced by the Commission, *In re* Petition of Louisville and Nashville R. R. Co., again affirmed and applied, and recommendations made for further advances in the direction of conformity to the law without delay.

In the Matter of the Tariffs and Classifications of the Atlanta and West Point R. R. Co. *et al.*, 19, 85.

WHEN COMBINED COMPETITION BY RAIL AND WATER DO NOT JUSTIFY EXCEPTION.

—The presence of combined rail and water competition at a longer distance point does not justify a greater charge for a shorter distance while the carrier maintains the shorter distance rate where such competition is of greater force and more controlling than at the longer distance point.

James & Abbott v. East Tennessee, Virginia and Georgia R'y Co. *et al.*, 225.

WHERE FREIGHTS HAVE PAID LOCAL RATES.—Nor does the fact that the freight is lumber which has paid a local rate over the roads of the defendants or of other railroad companies to the longer distance point justify such greater charge for a shorter distance.—*Id.*

EMPTY CARS AND RETURN LOADS.—Nor is such greater charge justified by the fact that the lumber business of the roads of a connecting line or any of them was done in cars which carried machinery to the longer distance point when profitable return loads were not always to be had.—*Id.*

BULK AND VALUE OF THE FREIGHT.—Nor does a difference in the bulk and value of lumber justify such greater charge when the carriers in their published rate sheets put the lumber in the same class and at the same rate.—*Id.*

ENFORCEMENT OF.

Report of Interstate Commerce Commission, 347.

FREE CARTAGE OF FREIGHTS.—If free cartage at a station has the effect to reduce a rate below the charge at another station nearer the point of shipment, it is unlawful as a less charge for a longer distance over the same line and in the same direction, the less being included within the greater.

Stone & Carten v. Detroit, Grand Haven and Milwaukee R'y Co., 613.

The respondent company had a tariff schedule in effect grouping the rates from eastern points at Ionia and Grand Rapids in Michigan, Ionia being the shorter distance, and furnished free cartage at Grand Rapids and not at Ionia. *Held*, that the free cartage at Grand Rapids was in effect a rebate and unlawful.—*Ib.*

LUMBER.

James & Abbott v. East Tennessee, Virginia and Georgia R'y Co. *et al.*, 225.

Rawson v. Newport News and Mississippi Valley Co., 266.

MILEAGE RATES.

See RATES; REASONABLE RATES.

MISAPPREHENSION.

IN THE PURCHASE OF TICKETS.

Sanger v. Southern Pacific Co. *et al.*, 134.

ORANGES.

Bishop v. Duval, receiver, etc., 128.

Harris v. Duval, receiver, etc., 128.

OVERCHARGE.

MADE THROUGH MISAPPREHENSION OF PASSENGER.

Sanger v. Southern Pacific Co., 134.

ON BOOKS.—In a case where a claim for overcharge on shipment of books was filed, and it appeared that the agent failed to bill the freight over the route directed by the shipper, it was held that the initial carrier should refund to the shipper the amount of the overcharge occasioned by the oversight of the freight agent.

Pankey v. Richmond and Danville R. R. Co. *et al.*, 658.

See PASSENGERS.

PARTIES.

ABSENCE OF NECESSARY PARTY.—No opinion will be expressed on rates which have been abandoned even though the parties request it. Such a course is particularly advisable and proper when it is apparent that other parties than the one complained of are interested in the question and have not had the opportunity to be heard upon it.

Chicago, St. Louis and Pittsburgh R. R. Co. v. Cleveland, Cincinnati, Chicago and St. Louis R'y Co., 223.

American Wire Nail Co. v. Cincinnati, New Orleans and Texas Pacific R'y Co. *et al.*, 224.

WHEN NECESSARY PARTIES WILL BE BROUGHT IN.—When carriers other than the respondents of record are committing the same violations of the Act to regulate commerce as the respondents, an order may issue against the respondents and the cause be held for the purpose of bringing such other carriers into it to be proceeded against unless they comply with the order.

Bates v. Pennsylvania R. R. Co. *et al.*, 435.

See PRACTICE.

PASSENGERS.

COLORED.—Are entitled to the comforts, accommodations and protection afforded to other passengers paying the same fare.

Heard v. Georgia R. R. Co., 111.

REFUNDING OF EXCESS CHARGES TO.—A misapprehension under which a party has paid for one journey in two sections, whereby the cost of the transportation has been made more than it would have been had a through ticket been purchased, may lawfully be corrected by return of the excess, though the carriers were without fault and only charged for each portion of the journey the regular rates.

Sanger v. Southern Pacific Co. et al., 134.

WHEN RATES FOR PARTIES ARE UNLAWFUL.

Pittsburgh, Cincinnati and St. Louis R'y Co. v. Baltimore and Ohio R. R. Co., 465.

PAYMENT OF ADDITIONAL TRAIN RATES BY.

Sidman v. Richmond and Danville R. R. Co., 512.

RIGHT OF CARRIERS TO SELECT CARS FOR TRANSPORTATION OF.

Worcester Excursion Car Co. v. Pennsylvania R. R. Co., 577.

See **CARRIERS; CARS; PREFERENCE AND ADVANTAGE; RATES; UNJUST DISCRIMINATION.**

PENDING PROCEEDINGS.

Rawson v. Newport News and Mississippi Valley Co. et al., 266.

See **PRACTICE.**

PETITION.

FOR RE-HEARING.—After a case has been decided a petition to open it for further testimony and a re-hearing should be verified, and should indicate the nature of the new testimony and its purpose.

In re Rice, Robinson & Witherop v. Western New York and Pennsylvania R. R. Co., 87.

Should show *prima facie* that some material testimony has been overlooked or misapprehended, or some error in the findings of fact or conclusions of law.

Myers v. Pennsylvania Co. et al., 130.

PETITIONER.

WHEN HIS REMEDY IS IN THE COURTS.

Bishop v. H. R. Duval, receiver, etc., 128.

Harris v. H. R. Duval, receiver, etc., 128.

Rawson v. Newport News and Mississippi Valley Co., 266.

PORTS OF TRANS-SHIPMENT.

New York Produce Exchange v. New York Central and Hudson R. R. Co. et al., 137.

Report of Interstate Commerce Commission, 372.

PRACTICE.

RE-HEARINGS.—After a case has been decided, a petition to open it for further testimony and a re-hearing should be verified, and should indicate the nature of the new testimony and its purpose.

In re Rice, Robinson & Witherop v. Western New York and Pennsylvania R. R. Co., 87.

When a question of general public interest is involved, the Commission, in its own discretion, and in furtherance of justice, may open a case to give parties the benefit of a more extended investigation of the same subject matter in other pending cases.—*Ib.*

A petition to re-open a case that has been decided, and for a re-hearing, should show *prima facie* that some material testimony has been overlooked or misapprehended, or some error in the findings of fact or conclusions of law.

Myers v. Pennsylvania Co. et al., 130.

When the application is insufficient in these respects, and only asks for a re-discussion of the facts and law already considered, with no offer of new evidence that can change the result, the application will be denied.—*Ib.*

CONCESSION OF RATES BEFORE DECISION TERMINATES THE CONTROVERSY.

Bishop v. Duval, receiver, etc., 128.

Harris v. Duval, receiver, etc., 128.

Lincoln Board of Trade v. Union Pacific R'y Co. et al., 221.

Chicago, St. Louis and Pittsburgh R. R. Co. v. Louisville, New Albany and Chicago R'y Co., 223.

American Wire Nail Co. v. Cincinnati, New Orleans and Texas Pacific R'y Co. et al., 224.

SUBPOENAS DUCES TECUM TO STRANGERS TO THE PROCEEDING.—When an application is made to compel parties not engaged as carriers of interstate commerce, or others who are strangers to the proceedings to produce books, papers and documents, the application should specify, as nearly as may be, the books, papers or documents for the production of which process is desired, and be accompanied by an affidavit that they are in possession of the witness or under his control, and should set forth facts which make a *prima facie* case that they contain evidence material and necessary to the party seeking their production; and in such a case the *prima facie* showing that what is required to be produced will be legal evidence, ought to be very clear and full.

Rice v. Cincinnati, Washington and Baltimore R'y Co. et al., 186.

Rice v. Louisville and Nashville R. R. Co., 186.

SUBPOENAS DUCES TECUM TO PARTIES.—Where the application is made to compel a party to the proceeding, who is a carrier engaged in interstate commerce, to produce its books for the purposes of evidence in a pending proceeding, it is sufficient for the application to indicate in writing, in a general way, what books of the carrier should be produced, and that the applicant believes they will become of service on account of the light they will throw upon the questions in controversy; and as an evidence of good faith the applicant should make an affidavit as part of the application that such application is made in good faith and not for the purpose of vexing or harrassing the defendant. Upon such a showing as a general rule the proceedings should issue, unless the number of books called for should be so large, or from other exceptional circumstances the Commission should order the testimony to be taken at such place as would avoid oppression in producing the books at a far distant hearing and expedite the progress of the investigation.—*Ib.*

SUBPOENAS DUCES TECUM.—As the application in these cases does not conform to the rules herein stated in reference to making a *prima facie* showing for the compulsory production of the books, papers and documents, either as against the defendant carriers or those who are strangers to these proceedings, the relief it seeks can not be granted, and for the present must be denied; but this does not preclude the petitioner from renewing his application, provided, in so doing, he conforms to the rules indicated.—*Ib.*

REPLICATION.—Under the rules of practice issued by the Commission a replication to an answer is not required or allowed.

Oregon Short Line R'y Co. *v.* Northern Pacific R. R. Co., 264.

REPARATION IN PENDING PROCEEDING.—The amendment of March 2, 1889, expressly provides that it shall have no application to pending proceedings, and as this proceeding was pending at the time, no reparation can be awarded, and the remedy of the petitioner is in the court.

Rawson *v.* Newport News and Mississippi Valley Company *et al.*, 266.

AMENDED RULES AND FORMS.

Report of Interstate Commerce Commission, 297.

COMPLAINT, WHEN INSUFFICIENT.—When a complaint charged that the respondent railroad companies, which were common carriers subject to the Act to regulate commerce, were accustomed to make deductions of from five to ten pounds of wheat per load from the true weight when delivered by the farmer to the buyer at the elevators of the respondents, and gave receipt to the farmer for the amount as thus diminished, upon which the latter was paid by the buyer, thereby suffering a loss to the extent of such reduction, but failed to charge that the wheat was delivered for interstate transportation, or, indeed, for transportation anywhere, it was *Held*, that the complaint was insufficient in substance to show violation of the Act to regulate commerce, and that the respondents were entitled to have it dismissed on their motions to that effect, but that the dismissal should be without prejudice.

White *v.* Michigan Central R. R. Co. *et al.*, 281.

An averment that the respondents were interstate commerce carriers subject to the Act to regulate commerce was not of itself sufficient to warrant an inference under a motion to dismiss a complaint for insufficiency, that wheat delivered at an elevator of the respondents was for interstate commerce.—*Ib.*

WHEN NECESSARY PARTIES WILL BE BROUGHT IN.—*Ib.*

See PARTIES.

PREFERENCE AND ADVANTAGE.

WHITE AND COLORED PASSENGERS.—It is the lawful duty of a carrier to afford to passengers engaged in interstate travel over its line equal comforts, accommodations and equipment, and protection of the law, without regard to race, color or sex, against undue prejudice and disadvantage from disorderly conduct on the part of other passengers or persons.

Heard *v.* Georgia R. R. Co., 111.

PREJUDICE AND DISADVANTAGE TO SHIPPERS OF CORN PRODUCTS.—When an existing classification and rate are not shown to operate injuriously to the carriers from a given point or to give undue advantage to shippers, a change is not justifiable that materially injures an important industry and a class of shippers at that point who have there built up the industry in reliance upon a continuation of the previous classification and rate first established and long maintained by the carriers themselves, without complaint from any quarter. Such change in classification and rate would subject the persons engaged in the industry and the locality and the particular traffic to unreasonable disadvantage within the prohibition of section three of the Act to regulate commerce.

Bates *v.* Pennsylvania R. R. Co. *et al.*, 435.

A discrimination between the rate on corn and its direct products from a given locality resulting from a reduction of the rate on corn below the rate on its direct products, which subjected persons in that locality engaged in the business of manufacturing corn into its direct products and of selling the same to unreasonable prejudice or disad-

vantage, and was without necessity or advantage to the carrier, or any reason founded on the character or condition of the traffic, *Held* to be in violation of section three of the Act to regulate commerce, notwithstanding the new rate on corn was open to all persons equally and with equal service.—*Id.*

CAR-LOAD AND LESS THAN CAR-LOAD QUANTITIES.—A difference in rates upon car-loads and less than car-loads of the same merchandise between the same points of carriage so wide as to be destructive to competition between large and small dealers, especially upon articles of general and necessary use, and which, under existing conditions of trade, furnish a large volume of business to carriers, is unjust and violates the provisions and principles of the Act.

Thurber *et al.* v. New York Central and Hudson River R. R. Co. *et al.*, 473.

Leggatt & Co. v. New York Central and Hudson River R. R. Co. *et al.*, 473.

Greene v. New York Central and Hudson River R. R. Co. *et al.*, 473.

RECEIPT AND DELIVERY OF TRAFFIC AT LOCAL STATIONS.—The Union Pacific Railway Company entered into a contract with the Rock Island Railway Company by which for a valuable consideration the latter company acquired the right to run its through trains from and to points on its own road over the road of the Union Pacific Company between Kansas City and Topeka, upon the condition that no intermediate business should be done by the Rock Island Company on any part of the line used under the agreement, the Union Pacific Company retaining control of the road and of its operation, and supplying transportation accommodations for the intermediate points between Kansas City and Topeka. Upon complaint made against the Rock Island Company by a resident of Lawrence, one of the intermediate towns, for refusing to perform the ordinary duties of a common carrier in receiving and discharging traffic at his town: *Held*, that the duties of the Rock Island Company were limited by its rights and powers under its contract and that it was not bound to do the local business prohibited by the agreement on the line used by its through trains.

Alford v. Chicago, Rock Island and Pacific R'y Co., 519.

THROUGH AND LOCAL RATES.—The proportion of one carrier in a through rate upon a long haul often and frequently well may be considerably less than its local rate for hauling the same freight over its own line, without there being any unjust discrimination, unlawful preference or extortion involved in such a method.

New Orleans Cotton Exchange v. Illinois Central R. R. Co. *et al.*, 534.

New Orleans Cotton Exchange v. Cincinnati, New Orleans and Texas Pacific R'y Co. *et al.*, 534.

TRANSPORTATION OF COTTON IN FLAT AND BOX CARS.—The Commission will not order the rail carrier to transport cotton on flat cars instead of in box cars to New Orleans, the rate being the same on each, no injury being shown to have resulted to petitioners or to that city, or to any shipper or producer from the carriage in box cars.—*Id.*

EXCURSION CARS.—Where a railroad company has by an arrangement with one car company procured a sufficient supply of sleeping and excursion cars for all the business of its lines, and refuses to haul excursion cars of other private car companies over its track for this reason, it can not be forced to do so against this objection.

Worcester Excursion Car Co. v. Pennsylvania R. R. Co., 577.

Unless the contrary is imposed as conditions in the grant of its charter, the right to construct and operate a railroad is a franchise in its nature exclusive, not held in common with the public, though the grant of the franchise is for the public use; and the tracks of a railroad

are not a common highway upon which any one can enter and use his own cars for transportation purposes against the objection of the company owning the tracks.—*Id.*

OBLIGATIONS OF STATE CARRIERS.—When a State carrier engages in interstate commerce it becomes a national instrumentality for the purposes of such commerce, and is subject to regulations prescribed by the national authority. It can not limit its obligations in that business, but must serve the business offered impartially and without preference or discrimination.

Mattingly v. Pennsylvania Company, 592.

See **FACILITIES OF TRAFFIC; RATES: REASONABLE RATES; RELATIVE RATES; UNJUST DISCRIMINATION.**

PREJUDICE AND DISADVANTAGE.

Bates v. Pennsylvania R. R. Co. et al., 435.

See **PREFERENCE AND ADVANTAGE.**

PROPRIETARY COMPANY.

GRANT OF TRACKAGE RIGHTS TO ANOTHER COMPANY FOR THROUGH BUSINESS BY.

Alford v. Chicago, Rock Island & Pacific Railway Co., 519.

PROSECUTIONS.

UNDER THE STATUTE.—Prosecutions must take place in United States courts. They are not cognizable before the Commission.

Report of the Interstate Commerce Commission, 430.

PUBLIC INTEREST.

IN SAFE CAR EQUIPMENT.

Report of Interstate Commerce Commission, 400.

Worcester Excursion Car Co. v. Pennsylvania R. R. Co., 577.

RAIL AND WATER LINES.

Report of Interstate Commerce Commission, 381.

COMBINED COMPETITION BY.

James & Abbott v. East Tennessee, Virginia & Georgia R'y Co. et al., 225.

See **LONG AND SHORT HAUL CLAUSE; WATER AND RAIL LINES; WATER COMPETITION.**

RAILROAD AND TELEGRAPH LINES.

GOVERNMENT-AIDED.

Report of Interstate Commerce Commission, 330.

RAILROAD COMMISSIONERS.

CONFERENCE OF.

Report of Interstate Commerce Commission, 337.

See **STATE RAILROAD COMMISSIONS.**

RAILROAD COMPANIES.

RELATIONS OF, WITH THEIR EMPLOYEES.

Report of Interstate Commerce Commission, 424.

See **CARRIERS.**

RAILROADS.

CONSOLIDATION OF.

Report of Interstate Commerce Commission, 389.

IN FOREIGN COUNTRIES.—*Ib.* 427.

GRANT OF TRACKAGE RIGHTS FOR THROUGH BUSINESS.

Alford v. Chicago, Rock Island and Pacific R'y Co., 519.

NOT A COMMON HIGHWAY.—The tracks of a railroad are not a common highway upon which any one can enter and use his own cars for transportation purposes against the objection of the company owning the tracks.

Worcester Excursion Car Co. v. Pennsylvania R. R. Co., 577.

See PREFERENCE AND ADVANTAGE; CARRIERS; CARS; CONTRACTS; AGREEMENTS.

RAIL TRANSPORTATION NOT SUBJECT TO THE LAW.

HOW ENFORCEMENT OF THE ACT IS EMBARRASSED BY.

Report of Interstate Commerce Commission, 384.

RAILWAY EMPLOYEES.

FREE TRANSPORTATION OF FAMILIES OF.

Report of the Interstate Commerce Commission, 301.

RELATIONS OF, WITH RAILROAD CORPORATIONS.—*Ib.* 424.

INSURANCE FUNDS FOR.—*Ib.* 424.

RAILWAY LEGISLATION.

Report of Interstate Commerce Commission, 345.

RAILWAY STATISTICS.

Report of Interstate Commerce Commission, 324, 343.

RATES.

COMBINATION, WHEN UNLAWFUL.—When combination rates are made which are different from the rates specified in the tariffs as published and filed, or when made by the employment of two or more classifications upon the same shipment, they are in contravention of the statute.

In the Matter of the Tariffs and Classifications of the Atlanta and West Point R. R. Co. *et al.*, 19.

MUST BE SHOWN ON PUBLISHED TARIFFS.—*Ib.*

NOTICE OF ADVANCES AND REDUCTIONS.

In re Acts and Doings of Grand Trunk R'y Co. of Canada, 89.

Report of Interstate Commerce Commission, 320.

Under the amendments of March 2, 1889, to the statute, requiring ten days' previous notice of advances and three days' previous notice of reductions in rates, they can not be varied from day to day, or oftener, to meet fluctuations in ocean rates.

New York Produce Exchange v. New York Central and Hudson River R. R. Co. et al., 137.

HOW DEMORALIZED BY WATER COMPETITION.

Report of the Interstate Commerce Commission, 382.

EFFECT OF STATE ON INTERSTATE RATES.—*Ib.* 387.

PASSENGER EXCURSION.—Passenger excursion rates are required to be published according to the provisions of section sixth of the Act to regulate commerce.

Pittsburgh, Cincinnati and St. Louis R'y Co. v. Baltimore and Ohio R. R. Co., 465.

TO PARTIES.—When party rates are lower than contemporaneous rates for single passengers they constitute discrimination and are illegal.—*Ib.*

THROUGH AND LOCAL.—Through rates are not required to be made on a mileage basis, nor local rates to correspond with the divisions of a joint through rate over the same line.

McMorran *et al.* v. Grand Trunk R'y Co. of Canada *et al.*, 252.

Through rates are not required to be the sums of locals, but may lawfully be lower so long as they are not unreasonably disproportionate, or unjustly discriminating against individuals or localities, or so low as to burden other business with part of the cost of the business upon which the through rate is charged.

Report of Interstate Commerce Commission, 313.

New Orleans Cotton Exchange v. Illinois Central R. R. Co. *et al.*, 534.

New Orleans Cotton Exchange v. Cincinnati, New Orleans and Texas Pacific R'y Co. *et al.*, 534.

PASSENGER.—Report of Interstate Commerce Commission, 296.

GROUP.—*Ib.* 312.

EXPORT.—New York Produce Exchange v. New York Central and Hudson R. R. Co. *et al.*, 137.

Report of Interstate Commerce Commission, 372.

ON DOMESTIC AND EXPORT SHIPMENTS.—*Ib.*

THROUGH EXPORT, INLAND PROPORTION OF.—*Ib.*

LOCAL.—Previous payment of to point of shipment does not justify exception to fourth section.

James & Abbott v. East Tennessee, Virginia and Georgia R'y Co. *et al.*, 225.

MILEAGE.—*Ib.*

McMorran *et al.* v. Grand Trunk R'y Co. of Canada *et al.*, 252.

Report of Interstate Commerce Commission, 313.

New Orleans Cotton Exchange v. Illinois Central R. R. Co. *et al.*, 534.

New Orleans Cotton Exchange v. Cincinnati, New Orleans and Texas Pacific R'y Co. *et al.*, 534.

ON LIVE CATTLE IN CAR-LOADS.

Leonard v. Chicago and Alton R. R. Co., 241.

Chappelle v. Chicago and Alton R. R. Co., 241.

ON CAR-LOAD AND LESS THAN CAR-LOAD SHIPMENTS.—473.

Thurber *et al.* v. New York Central and Hudson River R. R. Co. *et al.*, 473.

Leggett & Co. v. New York Central and Hudson River R. R. Co. *et al.*, 473.

Greene v. New York Central and Hudson River R. R. Co. *et al.*, 473.

ADDITIONAL TRAIN.—It was a regulation of the respondent company, published on its public tariff schedules, that the conductors should collect fare on trains from passengers without tickets by adding 25 cents to single trip rates. *Held*, that it was not unjust discrimination against the complainant to exact this addition from him.

Sidman v. Richmond and Danville R. R. Co., 512.

GROUP.

Report of Interstate Commerce Commission, 312.

Stone & Carten v. Detroit, Grand Haven and Milwaukee R'y Co., 612.

WHEN UNLAWFUL REBATES ARE GIVEN BY FREE CARTAGE.—*Ib.*

THROUGH, BY WATER AND RAIL LINES.

In the Matter of the Application of F. W. Clark, 649.

See CARRIERS; PREFERENCE AND ADVANTAGE; REASONABLE RATES; RELATIVE RATES; TARIFFS; TRAFFIC; UNJUST DISCRIMINATION.

REASONABLE RATES. *C*

NOT NECESSARILY PROPORTIONATE TO DISTANCE.—It is not unlawful to charge a less sum in the aggregate on business passing through distributing points to local points beyond than when like commodities are purchased by merchants at such distributing points and by them re-forwarded.

In re Tariffs and Classifications of the Atlanta and West Point R. R. Co. et al., 19, 70.

Though rates are not required to be made on a mileage basis, nor local rates to correspond with the division of a joint through rate over the same line, mileage is usually an element of importance, and due regard to distance proportions should be observed in connection with the other considerations that are material in fixing transportation charges.

McMorran et al. v. Grand Trunk R'y Co. of Canada et al., 252.

Report of Interstate Commerce Commission, 313.

The proportion of one carrier in a through rate upon a long haul often is, and frequently well may be, considerably less than its local rate for hauling the same freight over its own line, without there being any unjust discrimination, unlawful preference or extortion involved in such a method.

New Orleans Cotton Exchange v. Illinois Central R. R. Co. et al., 534.

New Orleans Cotton Exchange v. Cincinnati, New Orleans and Texas Pacific R'y Co. et al., 534.

DISTANCE AS A MEASURE OF RAILROAD SERVICE.—Distance is not always the controlling element in determining what is a reasonable rate, but there is ordinarily no better measure of railroad service in carrying goods than the distance they are carried.

James & Abbott v. East Tennessee, Virginia and Georgia R'y Co. et al., 225.

And where the rate of freight charges over one line, on similar freight carried from neighboring territory to the same market, is considerably greater than over other lines for distances as long or longer, such greater rate is held to be excessive and should be reduced.—*Ib.*

MINIMUM WEIGHT FOR CAR-LOADS OF LIVE CATTLE.—A practice had existed on the part of certain carriers of live cattle to make a car-load rate irrespective of weight, leaving the shipper to load into the car as many cattle as he pleased and was able to put into it. The carriers substituted for this practice the rule that while naming a car-lot rate they prescribed a minimum weight for a car-load and then charged by the hundred pounds in proportion to the car-lot rate for any excess over the minimum. *Held*, that this rule was not unlawful.

Leonard v. Chicago and Alton R. R. Co., 241.

Chappelle v. Chicago and Alton R. R. Co., 241

Prima facie the new rule is more just and reasonable than the practice it supplanted, since the charge is more in proportion to the service rendered.—*Ib.*

COST OF CARRIAGE—TERMINAL, BRIDGE AND FERRY EXPENSES.—Upon complaint against the Grand Trunk Railway of Canada for alleged unreasonableness of a rate of eight cents a hundred pounds on grain and ten cents a hundred pounds on grain products, from Port Huron to Buffalo, as compared with a through rate of fifteen cents a hundred pounds

from Chicago to Buffalo over the line formed by that road and the Chicago and Grand Trunk road. *Held*, that though the local rate from Port Huron to Buffalo might be regarded as disproportionate on the basis of distance alone, other considerations are involved, and in view of the terminal and ferry expenses at Port Huron, the Niagara Bridge charges and the Buffalo terminal expenses, all of which are borne by the Grand Trunk Railway of Canada alone upon business originating at Port Huron, the complaint against the eight-cent rate on grain is not sustained; but no good reason having been shown for a higher rate on grain products, that portion of the complaint is sustained, and the products ordered to be carried at the same rate as grain.

McMorran et al. v. Grand Trunk R'y Co. of Canada, et al., 252.

PROPERTY BILLED THROUGH BUT RE-SHIPED AT INTERMEDIATE POINT.

Chicago, Rock Island and Pacific R'y Co. v. Chicago and Alton R. Co., 450.

VALUE OF THE SERVICE TO BE CONSIDERED.—Cost of service is an important element in fixing transportation charges, and entitled to fair consideration, but is not alone controlling nor so applied in practice by carriers, and the value of the service to the property carried is an essential factor to be recognized in connection with other considerations. The public interests are not to be subordinated to those of carriers, and require proper regard for the value of the service in the apportionment of all charges upon traffic.

Thurber et al. v. New York Central and Hudson River R. R. Co. et al., 473.

Leggett & Co. v. New York Central and Hudson River R. R. Co. et al., 473.

Greene v. New York Central and Hudson River R. R. Co. et al., 473.

CAR-LOAD AND LESS THAN CAR-LOAD QUANTITIES.—A difference in rates upon car-loads and less than car-loads of the same merchandise between the same points of carriage so wide as to be destructive to competition between large and small dealers, especially upon articles of general and necessary use, and which, under existing conditions of trade, furnish a large volume of business to carriers, is unjust, and violates the provisions and principles of the Act.—*Ib.*

CAR-LOADS—MORE THAN ONE CONSIGNOR, OR MORE THAN ONE CONSIGNEE.—

A difference in rate for a solid car-load of one kind of freight from one consignor to one consignee, and a car-load quantity from the same point of shipment to the same destination consisting of like freight or freight of like character from more than one consignor to one consignee, or from one consignor to more than one consignee, is not justified by the difference in cost of handling.—*Ib.*

COMMUTATION TICKETS.—A quarterly commutation ticket was purchased 13 days after the quarter or term specified on the ticket commenced to run. *Held*, that the complainant was not entitled to recover any portion of the purchase price for the 13 days less than the full quarter.

Sidman v. Richmond and Danville R. R. Co., 512.

RAILROAD COMPETITION.—When questions involve the reasonableness of rates upon the transportation of cotton from the Southern States by all-rail lines to northern and eastern mills and Atlantic ports upon through rates and a long haul, on the one hand, and on the other, the local rates of rail carriers to a near port upon a short haul at which their service terminates, they having no associated line of steamships for a continuous carriage to ultimate destination, but the cotton so carried by them to such near port being chiefly for export, and all such rail lines penetrating the same territory and competing for the same business, running north, south and east, in opposite directions, such questions can only be disposed of on broad lines and not from narrow considerations.

New Orleans Cotton Exchange *v.* Illinois Central R. R. Co. *et al.*, 534.
 New Orleans Cotton Exchange *v.* Cincinnati, New Orleans and Texas
 Pacific R'y Co. *et al.*, 534.

The active competition of all these rail carriers for the transportation of such freight, thereby giving them the benefit of a participation in it and lowering the rates for the benefit of the producer and consumer and furnishing many outlets to markets, is one of the results contemplated by the Act to regulate commerce and which it was intended to promote.—*Ib.*

CIRCUMSTANCES AND CONDITIONS.—In considering such questions thus presented, the circumstances and conditions surrounding the traffic in the respective services performed in its carriage by the rail carriers may be, and in these proceedings are found to be substantially dissimilar and wholly unlike.—*Ib.*

In determining such questions, a comparison of rates based upon the doctrine that the rate per ton per mile for each of the different services so performed should be the same is not applicable, citing former decisions of the Commission upon this subject.—*Ib.*

In solving questions of this character the Commission will look at and consider every fact, circumstance and condition surrounding the traffic and of the service performed in its transportation, and if the competition of water carriers at any point is such as to be large, active, and of controlling force, the all-rail lines competing for the traffic at the same point may make rates that are reasonable and just in view of such competition and which will enable them to participate in the carriage of the traffic, and are not obliged to go out of the business and leave it as a monopoly to water carriers.—*Ib.*

TRANSPORTATION OF EMIGRANTS' MOVABLES.—A shipper, to whom as an emigrant, is accorded the rate provided by the special tariff, for example, sixty dollars on a car-load of freight weighing 20,000 pounds from Chicago, Illinois, to Hammond, Louisiana, a distance of 863 miles, in December, 1888, and in May, 1889, makes return shipment of same freight from Hammond, Louisiana, to Chicago, Illinois, under the general tariffs of the carrier, there being no other tariffs on north-bound freight between these points, and is charged therefor \$122.00 per car, complains of an unjust charge, *Held*, that as the carrier in each instance charged only its open published rates, and no evidence is offered to show that the rates in either instance are unjust and unreasonable, and as the general tariffs of the company have long been in use and published and open to the public, and the special tariff has been but recently issued and is open to a certain special class only and is unlawful, that the general tariffs afford a better standard of what are reasonable and just rates than the special tariff, and that the shipper in such case has not been injured in paying less than one-half the amount charged the general public on the first haul and only what was charged the general public on the second haul.

Elvey v. Illinois Central R. R. Co., 652.

The carrier is ordered and notified to cease and desist from further operating the special freight tariff.—*Ib.*

ERRORS IN FREIGHT BILLING.—Where by reason of an error of the agent in billing the freight an overcharge was made, the initial carrier was directed to refund the amount of the overcharge.

Pankey v. Richmond and Danville R. R. Co. et al., 658.

REBATES.

ON SHIPMENTS OF COAL.

In re Acts and Doings of Grand Trunk R'y Co. of Canada, 89.

PAID FROM CAR MILEAGE.

Report of Interstate Commerce Commission, 309.

TO HOLDERS OF COMMUTATION TICKETS.

Sidman v. Richmond and Danville R. R. Co., 512.

UNLAWFULLY CAUSED BY FREE CARTAGE.

Stone & Carten v. Detroit, Grand Haven and Milwaukee R'y Co., 613.

See **UNJUST DISCRIMINATION**.

RE-HEARINGS.

See **PRACTICE**.

RELATIVE RATES.

IN NEIGHBORING TERRITORY.—Where a freight rate over one line, on similar freight carried from neighboring territory to the same market, is considerably greater than over other lines for distances as long or longer, such greater rate is held to be excessive and should be reduced.

James & Abbott v. East Tennessee, Virginia and Georgia R'y Co. et al., 225.

ON DIFFERENT BRANCHES OF THE SAME LINE.—Principles relating to, as cited in *Logan et al. v. Chicago and Northwestern R'y Co.*, 2 I. C. C. Rep. 604, re-stated.

Report of Interstate Commerce Commission, 313.

ON CAR-LOAD AND LESS THAN CAR-LOAD QUANTITIES.

Thurber et al. v. New York Central and Hudson River R. R. Co. et al., 473.

Leggett & Co. v. New York Central and Hudson River R. R. Co et al., 473.

Greene v. New York Central and Hudson River R. R. Co. et al., 473.

FOR LONG AND SHORT HAULS OVER DIFFERENT LINES.

New Orleans Cotton Exchange v. Illinois Central R. R. Co. et al. 534.

New Orleans Cotton Exchange v. Cincinnati, New Orleans and Texas Pacific R'y Co. et al., 534.

ON COMPRESSED AND UNCOMPRESSED COTTON.—The method of compressing cotton for shipment from the Southern States is one that is found to be absolutely necessary for long through hauls by rail, or where the cotton is carried by coastwise steamers or by ocean vessels for export, and the difference in the rate of transportation of compressed and uncompressed cotton by rail carriers should be the actual and necessary cost of compressing.—*Id.*

The Commission by adjustment corrects the rates at Meridian and Jackson, Miss., on compressed and uncompressed cotton carried to New Orleans, and holds, that the complaint as to the relative reasonableness of rates at other stations is not sustained.—*Id.*

See **PREFERENCE AND ADVANTAGE**. **REASONABLE RATES**.

REPARATION.

REMOVAL OF QUESTION TO THE COURTS.—The question whether rates paid ought to be refunded, having been presented to a judicial tribunal where it is now pending, the Commission will not take cognizance of it.

Bishop v. Duval, receiver, etc., 128.

Harris v. Duval, receiver, etc., 128.

IN PENDING PROCEEDINGS.—The amendment of March 2, 1889, expressly provides that it shall have no application to pending proceedings, and as this proceeding was pending at the time no reparation can be awarded, and the remedy of the petitioner is in the courts.

Rawson v. Newport News and Mississippi Valley Company, 266.

See **OVERCHARGE**.

REPLICATION.

NOT REQUIRED OR ALLOWED.

Oregon Short Line R'y Co. v. Northern Pacific R. R. Co., 264.

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RE-SHIPMENT OF FREIGHTS.

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James & Abbott v. East Tennessee, Virginia and Georgia R'y Co. *et al.*, 225.

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Chicago, Rock Island and Pacific R'y Co. v. Chicago and Alton R. R. Co., 450.

See LONG AND SHORT HAUL CLAUSE; THROUGH SHIPMENTS; THROUGH AND LOCAL RATES; RATES; REASONABLE RATES.

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In re Acts and Doings of Grand Trunk R'y Co. of Canada, 89.

REBATES TO BY FREE CARTAGE OF FREIGHTS.

Stone & Carten v. Detroit, Grand Haven & Milwaukee R'y Co., 618.

RIGHTS OF IN THE ROUTING AND WAY-BILLING OF FREIGHT.

Pankey v. Richmond and Danville R. R. Co. *et al.*, 658.

SIXTH SECTION.

FORM OF TARIFFS.—During an investigation made by the Commission, on its own motion, the form of tariffs was shown in many cases not to meet the requirements of the law, and in other cases the tariffs did not show the rates actually charged to shippers.

In re Tariffs and Classifications of Atlanta and West Point R. R. Co. *et al.*, 19, 55.

SCHEDULES OF FOREIGN CARRIER.—Under the provisions of the Act the Grand Trunk Railway of Canada is required to print, post and file its schedules of rates and charges for the transportation of property from

tions in that business, but must serve the business offered impartially and without preference or discrimination.

Mattingly v. Pennsylvania Co., 592.

AS PART OF A THROUGH ROUTE.—While it is the duty of a State carrier which indulges in interstate commerce to forward traffic offered from a connecting line there is no authority under the present Act to compel the carrier to forward the traffic over a route not operated or selected by itself.—*Ib.*

See INTERSTATE COMMERCE; TRAFFIC; FACILITIES OF TRAFFIC.

STATE RAILROAD COMMISSIONS.

ACTION OF, NOT CONTROLLING IN MATTERS RELATING TO INTERSTATE COMMERCE.

Leonard v. Chicago and Alton R. R. Co., 241.

Chappelle v. Chicago and Alton R. R. Co., 241.

VIEWS OF, IN REGARD TO SAFETY APPLIANCES.—415.

See INTERSTATE COMMERCE; RAILROAD COMMISSIONERS.

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Report of Interstate Commerce Commission, 324, 343.

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Rice v. Cincinnati, Washington and Baltimore R. R. Co. et al., 186.

Rice v. Louisville and Nashville R. R. Co., 186.

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TARIFFS.

FORM OF.—The form of tariffs and classifications criticised and requirements of statute stated in respect thereto.

In re Tariffs and Classifications of the Atlanta and West Point R. R. Co. et al., 19.

OF FOREIGN CARRIERS.—When engaged in the transportation of passengers or property for a continuous carriage or shipment from a place in the United States to a place in an adjacent foreign country, foreign as well as domestic common carriers are subject to the provision of the Act in respect to the printing of schedules of rates, fares and charges for the traffic they carry, the posting and filing with the Interstate Commerce Commission of copies of such schedules, the notice of advances and reductions and the maintenance of the rates, fares and charges established and published and in force at the time. Such common carriers are also subject to the provisions of the Act in respect to joint tariffs and rates, fares and charges for continuous lines or routes.

In re Acts and Doings of Grand Trunk R'y Co. of Canada, 89.

THROUGH EXPORT.—Whenever a tariff is established for merchandise billed or intended for export by sea, and ocean rates are not specified, either because of fluctuations or for any other reason, so that only the charge for inland transportation is definitely fixed, the tariff as filed and made public should show the rate charged by the inland carrier or carriers to the point of export, including all terminal charges and expenses, and should also show in what manner the through rate to the point of ultimate destination is to be determined, whether by addition of the ocean rate from time to time prevailing, or how otherwise.

New York Produce Exchange v. New York Central and Hudson River R. R. Co. *et al.*, 137.

ABANDONMENT OF.—Where a tariff complained of was abandoned by the carriers for a long period of time before the complaint was made and shortly after the tariff was put in force, the Commission will not make an order requiring the carriers to cease and desist from enforcing such tariff, because such an order would be vain and useless.

Rawson v. Newport News and Mississippi Valley Co. *et al.*, 266.

PUBLICATION AND FILING OF.

Report of the Interstate Commerce Commission, 319.

PASSENGER.—Excursion rates are required to be published according to the provisions of section 6 of the Act to regulate commerce.

Pittsburgh, Cincinnati and St. Louis R'y Co. v. Baltimore and Ohio R. R. Co., 465.

UNLAWFUL REBATES FROM, CAUSED BY FREE CARTAGE.

Stone and Carten v. Detroit, Grand Haven and Milwaukee R'y Co., 613.

SPECIAL EMIGRANT, WHEN UNLAWFUL.

Elvey v. Illinois Central R. R. Co., 652.

See RATES; PREFERENCE AND ADVANTAGE; UNJUST DISCRIMINATION.

TERMINAL CHARGES.

New York Produce Exchange v. New York Central and Hudson River R. R. Co. *et al.*, 137.

McMorran *et al.* v. Grand Trunk R'y Co. of Canada *et al.*, 252.

See REASONABLE RATES; TARIFFS.

THIRD SECTION.

AMENDMENT OF, RECOMMENDED —432.

Little Rock and Memphis R. R. Co. v. East Tennessee, Virginia and Georgia R. R. Co. *et al.*, 1.

Report of Interstate Commerce Commission, 432.

See FACILITIES OF TRAFFIC; TRAFFIC; RELATIVE RATES; PREFERENCE AND ADVANTAGE.

THROUGH AND LOCAL RATES.

PROPERTY RE-SHIPED AT INTERMEDIATE POINT.—Where property is to be transported by rail by continuous and uninterrupted carriage from one station to another, there may be sound and legal reasons for making a charge for the through transportation which is less than the sum of the locals for the transportation of like property from point to point between such stations. But where property is billed from one station to another with the understanding that it is to be unloaded at an intermediate station, and that whether it shall be re-loaded for further carriage will depend upon the volition of the shipper or of any one who may have become purchaser, the case does not fall within the reasons governing rates on through transportation, and the carrier is not at such intermediate points entitled to have the carriage protected as a through shipment as against competitors.

Chicago, Rock Island and Pacific R'y Co. v. Chicago and Alton R. R. Co., 450.

See RATES; REASONABLE RATES.

THROUGH RATES.**BY WATER AND RAIL LINES.**

In re Application of F. W. Clark, 649.

See RATES; FACILITIES OF TRAFFIC; TRAFFIC; CARRIERS.

THROUGH ROUTES.

See CARRIERS; FACILITIES OF TRAFFIC.

THROUGH ROUTES AND THROUGH RATES.**THE ACT DOES NOT PROVIDE FOR ORDERING.**

Little Rock and Memphis R. R. Co. v. East Tennessee, Virginia and Georgia R'y Co. *et al.*, 1.

Report of Interstate Commerce Commission, 395.

Mattingly v. Pennsylvania Company, 592.

See CARRIERS; FACILITIES OF TRAFFIC.

THROUGH SHIPMENTS.

PROPERTY RE-SHIPED AT INTERMEDIATE STATION.—Where property is billed from one station to another with the understanding that it is to be unloaded at an intermediate station, and that whether it shall be re-loaded for further carriage will depend upon the volition of the shipper or of any one who may have become purchaser, the case does not fall within the reason of governing rates on through transportation, and the carrier is not at such intermediate points entitled to have the carriage protected as a through shipment as against competitors.

Chicago, Rock Island and Pacific R'y Co. v. Chicago and Alton R. R. Co., 450.

THROUGH TICKETS.

See TICKETS.

THROUGH TRAFFIC.

See FACILITIES OF TRAFFIC; CONTRACTS; PREFERENCE AND ADVANTAGE; UNJUST DISCRIMINATION; RATES; THROUGH ROUTES AND THROUGH RATES.

TICKETS.**THROUGH.**

Little Rock and Memphis v. East Tennessee, Virginia and Georgia R'y Co. *et al.*, 1.

MISAPPREHENSION IN PURCHASING.

Sanger v. South Pacific Co. *et al.*, 134.

MILEAGE.

Report of Interstate Commerce Commission, 302.

EXCURSION.—*Id.* 302.

Rates at which passenger excursion tickets are sold must be published according to the provisions of Section Sixth of the Act to regulate commerce.

Pittsburgh, Cincinnati and St. Louis R'y Co. v. Baltimore and Ohio R. R. Co., 465.

COMMUTATION.

Report of Interstate Commerce Commission, 802.

Pittsburgh, Cincinnati and St. Louis R'y Co. v. Baltimore and Ohio R. R. Co. 465.

It was not unlawful discrimination to refuse to refund to the complainant holding a commutation ticket, who had forgotten to take it on a certain trip, and who has paid his fare, notwithstanding he supposed it was the custom to do so when he purchased the ticket.

Sidman v. Richmond and Danville R. R. Co., 512.

DATE OF EXPIRATION.—The complainant purchased what the respondent termed a quarterly commutation ticket on the 18th day of June, specifying the number of trips that might be taken thereon as 180, but it provided that the term should expire on the 31st day of the following August, and this was known to the complainant when he made the purchase. It was similarly stated on each one of said quarterly tickets when it was to expire, viz., at the end of the third calendar month after its issue. *Held*, that the complainant was not entitled to recover any portion of the purchase price for the thirteen days less than the full quarter—*Ib.*

PARTY RATE.—Party rate tickets are not commutation tickets, and when party rates are lower than contemporaneous rates for single passengers, they constitute discrimination and are illegal.

Pittsburgh, Cincinnati and St. Louis R'y Co. v. Baltimore and Ohio R. R. Co., 465.

COMMISSIONS ON THE SALE OF.—The practice has frequently been condemned by the Commission as one of very doubtful benefit in any case, and as positive injury in others; as one that affords opportunities too often improved, for discrimination and fraud in the sale of tickets and of generally a source of demoralization.

Report of the Interstate Commerce Commission, 805.

Legislation prohibiting the payment of, recommended.—*Ib.* 433.

SALE OF BY TICKET BROKERS—LEGISLATION CONCERNING RECOMMENDED.—*Ib.* 433.

TICKET BROKERAGE.**INVESTIGATIONS CONCERNING.**

Report of Interstate Commerce Commission, 811.

ABUSES OF.—*Ib.*

LEGISLATION CONCERNING RECOMMENDED.—*Ib.* 433.

TRUCKAGE FACILITIES.**USE OF LIMITED BY TERMS OF CONTRACT.**

Alford v. Chicago, Rock Island and Pacific R'y Co., 519.

See PREFERENCE AND ADVANTAGE; CARRIERS; UNJUST DISCRIMINATION; FACILITIES OF TRAFFIC; CONTRACTS.

TRAFFIC.**DESTINED TO POINT IN ADJACENT FOREIGN COUNTRY.**

In re Acts and Doings of Grand Trunk R'y Co. of Canada, 89.

IMPORT.

New York Produce Exchange v. New York Central and Hudson River R. R. Co. *et al.*, 137.

Report of Interstate Commerce Commission, 377.

EXPORT.

New York Produce Exchange *v.* New York Central and Hudson River R. R. Co. *et al.*, 137.
Report of Interstate Commerce Commission, 372.

STATE AND INTERSTATE.

Leonard *v.* Chicago and Alton R. R. Co., 241.
Chappelle *v.* Chicago and Alton R. R. Co., 241.
Report of the Interstate Commerce Commission, 386.

INTERCHANGE OF.—For any advantage of which the roads were deprived by the restrictive provisions of the Act to regulate commerce it is believed an equivalent was intended to be given in the equal facilities for the interchange of traffic and for receiving and forwarding persons and property under Section Three of that statute.
Report of Interstate Commerce Commission, 395.

RECEIPT AND DELIVERY OF. 519.

Alford *v.* Chicago, Rock Island & Pacific Railway Co., 519.

See **CARRIERS; FACILITIES OF TRAFFIC; INTERSTATE COMMERCE; PREFERENCE AND ADVANTAGE; REASONABLE RATES; RELATIVE RATES; UNJUST DISCRIMINATION.**

TRAIN BRAKES.

CONTINUOUS.

Report of Interstate Commerce Commission, 409.

TRAIN RATES.

Sidman *v.* Richmond and Danville R. R. Co., 512.
See **RATES.**

TWELFTH SECTION.

AMENDMENT OF RECOMMENDED.

Report of Interstate Commerce Commission, 432.

TWENTY-SECOND SECTION.

AMENDMENT OF RECOMMENDED.

Report of Interstate Commerce Commission, 433.

UNIFORM CLASSIFICATION.

PROGRESS MADE IN THE DIRECTION OF.

Report of Interstate Commerce Commission, 345, 351.

UNITED STATES COURTS.

QUESTIONS RELATING TO INTERSTATE COMMERCE DECIDED BY.

Report of Interstate Commerce Commission, 316.

UNJUST DISCRIMINATION.

DEFECTIVE TARIFFS AND DIFFERENT CLASSIFICATIONS.—It was found by the Commission in an investigation that certain carriers failed to show on their tariffs the rates actually charged to shippers, and that combination rates were given different from the rates published on said tariff, and that different classifications were used at times upon one carrier's

road for shipments of the same commodity to neighboring points, and at other times two or more classifications were employed upon the same shipment.

In re Tariffs and Classifications of Atlanta and West Point R. R. Co. et al., 19, 85.

REBATES.—Upon an investigation by the Commission it appeared that the Grand Trunk Railway Company of Canada transports coal and coke under a schedule specifying a total rate from Buffalo, Black Rock and Suspension Bridge, in the United States, to Hamilton, Dundas, and several other points in Canada, and that the published tariff rate for such transportation from points named to Hamilton and Dundas is one dollar a ton, but that it accepts a reduced charge, or allows a rebate of twenty-five cents a ton in favor of certain consignees at Hamilton, Dundas and other points in Canada. *Held*, that the reduced charge accepted, or rebate allowed, is in violation of the Act to regulate commerce and unlawful.

In re Acts and Doings of Grand Trunk R'y Co. of Canada, 89.

WHITE AND COLORED PASSENGERS.—It is a lawful duty that a carrier, like the defendant, owes to the traveling public in carrying out its rule of furnishing separate cars to white and colored passengers on its line engaged in interstate travel, to make them equal in comforts, accommodation and equipment, without any discrimination. *Held*, that the action of the company was in violation of the law.

Heard v. Georgia R. R. Co., 111.

DOMESTIC AND EXPORT TRAFFIC.—From November 4, 1888, to February 20, 1888, the Trunk Lines, so called, under resolutions of their Association, made through export rates of which the inland proportion accepted by them was, at the port of New York, often ten cents or more per hundred pounds less on like traffic than the published tariff rates charged at the same time to the same port. *Held*, that the discrepancy between the proportion of the through rate accepted and the established tariffs for seaboard consignments for the same inland carriage, is not shown to have been justified by any circumstances tending to show that it was just or proper, and that it must therefore be deemed an unjust and unlawful discrimination as against the transportation terminating at that port.

New York Produce Exchange v. New York Central and Hudson River R. R. Co. et al., 137.

Report of Interstate Commerce Commission, 372.

It is essential that any method for making rates should be practicable and not afford a cover for discrimination and injustice. The only practical mode yet devised for making through export rates, as appears by past experience, is to add to the established inland rates from the interior to the seaboard the current ocean rates.—*Ib.*

FREE PASSES AND FREE TRANSPORTATION.

Report of Interstate Commerce Commission, 297.

MILEAGE, EXCURSION AND COMMUTATION TICKETS.—Must be offered impartially to all who accept the conditions on which they are issued.—*Ib.* 302.

CAR MILEAGE.—Cars should be owned by the carrier itself and furnished to all alike, or, if owned by the shipper, only such reasonable allowance for their use should be made as to permit no advantage to the private owner of cars who is also a shipper, nor afford a margin for paying rebates to other shippers.—*Ib.* 305.

BETWEEN CORN AND CORN PRODUCTS.—The defense of water competition from Chicago and the lake shipping points to seaboard points east, as a justification for an otherwise unjustifiable discrimination in rate between corn and its direct products from Indianapolis to said seaboard points

was held to be untenable, owing to the situation of Indianapolis as to the lakes and to the location of the territory where the corn was mainly raised that was marketed at Indianapolis, and to the other facts established in this case.

Bates v. Pennsylvania R. R. Co. et al., 435.

PASSENGER RATES.—Passenger excursion rates are required to be published according to the provisions of Section 6 of the Act to regulate commerce.

Pittsburgh, Cincinnati and St. Louis R'y Co. v. Baltimore and Ohio R. R. Co., 465.

Party rate tickets are not commutation tickets, and when party rates are lower than contemporaneous rates for single passengers they constitute discrimination and are illegal.—*Ib.*

The principles laid down *In re Passenger Tariffs*, 2 I. C. C. Rep. — 649, cited and re-affirmed.—*Ib.*

CAR-LOAD AND LESS THAN CAR-QUANTITIES.—Under the Official Classification the articles known in trade as grocery articles are so classified as to discriminate unjustly in rates between car-loads and less than car-loads upon many articles, and a revision of the classification and rates to correct unjust differences and give these respective modes of shipment more relatively reasonable rates is necessary and is so ordered.

Thurber et al. v. New York Central and Hudson River R. R. Co. et al., 473.

Leggett & Co. v. Same, 473.

Greene v. Same, 473.

COMMUTATION TICKET HOLDERS.—The respondent issued commutation tickets for a stated number of trips within a specified time, subject to several conditions, one of which was that the purchaser should have no claim for rebate on account of non-use of the ticket from any cause; another that it be presented to the conductor for cancellation of each trip when taken. A commuter had to pay the conductor full fare if he did not have his ticket, but in such cases the respondent had fallen into the habit of refunding the same on presentation of the ticket for cancellation of the trip at the proper office of the company. About three weeks prior to the complainant's purchase of his ticket, the respondent had discontinued this habit and had given notice to that effect in a new tariff sheet filed with the Interstate Commerce Commission and posted in the stations of the railroad as required by law on a change of tariff rates. *Held*, that it was not an unlawful discrimination to refuse to refund to the complainant who held such ticket, but had forgotten to take it on a certain trip and paid his fare, notwithstanding he supposed the former custom was in vogue when he purchased his ticket.

Sidman v. Richmond and Danville R. R. Co., 812.

It was a regulation of the respondent company, published on its public tariff schedules filed and posted as required by the Act to regulate commerce, that the conductor should collect fare on trains from passengers without tickets by adding 25 cents to single trip rates. *Held*, that it was not unjust discrimination against the complainant to exact this addition from him.—*Ib.*

LOCAL AND THROUGH TRAFFIC.—The Union Pacific Railway Company entered into a contract with the Rock Island Railway Company by which for a valuable consideration the latter company acquired a right to run its through trains from and to points on its own road over the road of the Union Pacific Company through Kansas City and Topeka, upon the condition that no intermediate business should be done by the Rock Island Company on any part of the line used under the agreement, the Union Pacific Company retaining control of the road and of its operations, and supplying transportation accommodations for the intermediate points

between Kansas City and Topeka. Upon complaint made against the Rock Island Company by a resident of Lawrence, one of the intermediate towns, for refusing to perform the ordinary duties of a common carrier in receiving and discharging traffic at his town, *Held*, that the duties of the Rock Island Company were limited by its rights and powers under its contract and that it was not bound to do local business prohibited by the agreement on the line used by its through train.

Alford *v.* Chicago, Rock Island and Pacific R'y Co., 519.

THROUGH AND LOCAL RATES.—The proportion of one carrier in a through rate upon a long haul often is and frequently may be considerably less than its local rate for hauling the same freight over its own line, without there being any unjust discrimination, unlawful preference or extortion involved in such a method.

New Orleans Cotton Exchange *v.* Illinois Central R. R. Co., 534.

New Orleans Cotton Exchange *v.* Cincinnati, New Orleans and Texas Pacific R'y Co. *et al.*, 534.

OBLIGATIONS OF STATE CARRIERS.—When a State carrier engages in interstate commerce it becomes a national instrumentality for the purposes of such commerce, and is subject to regulations prescribed by the national authority. It can not limit its obligations in that business, but must serve the business offered impartially and without preference or discrimination.

Mattingly *v.* Pennsylvania Co., 592.

FREE CARTAGE OF FREIGHT.—Where a common carrier subject to the Act to regulate commerce has established and published its schedule of rates and charges for a station on its line, free cartage furnished by the carrier for the collection and delivery of freight carried on its road to or from such station operates as a reduction or rebate from the schedule charge and is unlawful. If free cartage at a station has the effect to reduce a rate below the charge at another station nearer the point of shipment it is unlawful as a less charge for a longer distance over the same line and in the same direction, the less being included within the greater.

Stone & Carten *v.* Detroit, Grand Haven and Milwaukee R'y Co., 613.

It is not material to the question of the lawfulness of free cartage furnished at one town and not at another that the business was done in that way for many years before the Act to regulate commerce was enacted. If what was done and is now done works unjust discrimination, or is in any particular obnoxious to the law, it is an abuse, and one that it must be assumed was intended to be corrected by the Act.—*Ib.*

The respondent company had a tariff schedule in effect grouping the rates from eastern points at Ionia and Grand Rapids in Michigan, Ionia being the shorter distance, and furnished free cartage at Grand Rapids and not at Ionia.—*Ib.*

Upon complaint by a firm of dealers at Ionia:

Held, that the free cartage at Grand Rapids was in effect a rebate and unlawful.—*Ib.*

BY SPECIAL TARIFFS ON EMIGRANTS' MOVABLES.—Where a carrier by its published general tariffs charges the general public from and to all points upon a large portion of its lines certain rates upon a class of freight and at the same time publishes and puts into force a special tariff by which it charges a class of persons named, from and to the same points on its lines, less than one-half in amount of the rates on the same class of freight that it charges the general public in its general tariffs, such a discrimination is unjust and is violative of the Act to regulate commerce.

Elvey v. Illinois Central R. R. Co. et al., 652.

Such a discrimination can not be sustained upon the ground that the special tariffs are made to aid "emigrants" in moving from one State to another where land is cheap and to develop a sparsely settled country and to build up business along the carrier's lines, and upon the supposition that this constitutes substantially dissimilar circumstances and conditions to what exists when similar services are rendered by the carrier for the general public.—*Ib.*

See ACT TO REGULATE COMMERCE; CLASSIFICATION; PREFERENCE AND ADVANTAGE.

VALUE OF FREIGHTS.

James & Abbott v. East Tennessee, Virginia and Georgia R'y Co. 225.

WATER AND RAIL LINES.

RELATIONS OF, DESCRIBED, 381.

THROUGH RATES BY.—Through rates in interstate traffic are the subject of agreement among carriers who transport the freight, and for their existence are dependent upon such agreement; and one of the features of such rates usually is that each carrier receiving the freight pays the charges upon it of the carrier delivering it.

In re Application of F. W. Clark, 649.

Where a line of steamships, for example, plying between New York and Wilmington, N. C., make a through rate from New York *via* Wilmington and the Carolina Central Railroad to interior points, by adding the steamer rate to the local tariff rate of the railroad to the interior points, there being no agreed through rates for such freight between the steamship and rail lines, the rail carrier, when the freight is tendered to it at Wilmington, is under no obligation to pay the rates earned by the steamer in transporting the freight from New York to Wilmington, but may decline to do so, leaving the steamship and the shipper to settle the matter of the steamship's charges before the carrier takes the freight and transports it to the interior point.—*Ib.*

WATER COMPETITION.

James & Abbott v. East Tennessee, Virginia & Georgia R'y Co. et al., 225.

WHEN NOT SUFFICIENT TO JUSTIFY DISCRIMINATION IN RATES.

Bates v. Pennsylvania R. R. et al., 435.

WHEN DISSIMILAR CIRCUMSTANCES AND CONDITIONS ARE CAUSED BY.

New Orleans Cotton Exchange v. Illinois Central R. R. Co., 534.

New Orleans Cotton Exchange v. Cincinnati, New Orleans and Texas Pacific R'y Co., 534.

APPLICATION OF THE ACT TO.

Report of Interstate Commerce Commission, 381.

DEMORLIZATION IN RATES CAUSED BY.—*Ib.* 382.

SHOULD BE MADE SUBJECT TO THE ACT.—Legislation making the Act apply to carriers by water recommended.—*Ib.* 433.

See LONG AND SHORT HAUL CLAUSE; WATER TRANSPORTATION.

WHEAT.

White v. Michigan Central R. R. Co. et al., 281.

WITNESSES.

ATTENDANCE OF.—Amendment of the Act in respect to the attendance of witnesses and the taking of testimony by deposition recommended.

Report of Interstate Commerce Commission, 432.